



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

Review of the Critical Incident Response Plans of the United States Attorneys' Offices

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EXECUTIVE SUMMARY

The Department of Justice (Department) has long recognized the need to respond quickly and appropriately to critical incidents, from natural disasters to terrorist attacks. Since 1988, the Department has implemented at least 11 initiatives aimed specifically at improving its capability in this important area. After-action reports on critical incidents in the 1990s (for example, Ruby Ridge and the Branch Davidian standoff in Waco, Texas) documented problems with the Federal Bureau of Investigation (FBI), other federal investigative agencies in the Department's responses, and United States Attorneys' Offices (USAOs) responses to critical incidents.

In 1996, the Attorney General addressed the USAOs' preparedness to respond to critical incidents by directing that the Department implement the Crisis Management Coordinator Program (CMC Program). To implement the CMC Program, each USAO was directed to designate a Crisis Management Coordinator (CMC), who was to develop a critical incident response plan (Plan) and make other preparations to ensure that the USAO was ready to respond to a critical incident. The Criminal Division's Counterterrorism Section (CTS)¹ and the Executive Office for United States Attorneys (EOUSA) were assigned to administer and support the CMC Program, and to train the coordinators designated by the United States Attorneys.

After September 11, 2001, the Attorney General undertook an extensive reorganization of the Department to address the continuing threat of attacks by terrorist organizations, and created the USAOs' Anti-Terrorism Task Forces (ATTFs).² The Department's Anti-Terrorism Plan clearly gave priority to the prevention of future terrorist attacks through expanded intelligence gathering and information sharing. However, the need to respond quickly and effectively to critical incidents continued to be highlighted by both the National Strategy for Homeland Security and the Department's Anti-Terrorism Plan.³ For USAOs, that response continues to depend, in large part, on the preparations and Plans developed under the CMC Program.

We conducted this review to determine whether the USAOs have acted to improve their ability to respond quickly and appropriately to critical incidents

¹ Prior to December 1, 2002, CTS was part of the Terrorism and Violent Crime Section.

² The ATTFs are now called Anti-Terrorism Advisory Councils (ATACs).

³ Memorandum from the Attorney General to the U.S. Attorneys, "Anti-Terrorism Plan," September 17, 2001; National Strategy for Homeland Security, Office of Homeland Security, July 16, 2002.

by developing comprehensive critical incident response plans, training staff to carry out the Plans, and exercising the Plans.⁴

Results in Brief

The primary finding of this review is that most USAOs have not effectively implemented the required CMC Program. In particular, the Plans developed by the USAOs are inadequate in scope and content to ensure a quick and appropriate response to a terrorist attack or other critical incident. In 1999, CTS identified for the USAOs 48 fundamental actions that should be taken when responding to a critical incident. The actions are organized into 10 separate categories that cover areas such as coordinating and conducting interviews, managing the overall crime scene, and deploying USAO resources to FBI's command post. For example, among the 48 actions are steps to ensure that responders:

- coordinate interviews to avoid multiple agency interviews of the same person,
- establish a unified evidence room and communicate chain of custody procedures,
- establish a crime scene protocol,
- preserve the crime scene, and
- set up overlapping relief shifts to avoid fatigue.

Some of the 48 actions were included to avoid missteps identified in after-action reports on earlier critical incidents. For example, the need to establish a crime scene protocol and better preserve the crime scene were identified in the after-action report on the Oklahoma City bombing. The need to plan for overlapping relief shifts to avoid fatigue and the potential for poor decision-making that may result from fatigue was recommended in the Ruby Ridge after-action report. With the advent of the ATTF initiative in October 2001, the Department increased the level of communication and interaction between USAOs, FBI, and state and local officials, thus enhancing overall response capabilities. Nonetheless, developing Plans that address all 48 actions remained essential to ensure a comprehensive response to a critical incident.

⁴ The performance of the USAOs' ATTF/ATACs is the subject of a separate Office of Inspector General review.

However, the Plans developed by the USAOs failed overwhelmingly to include guidance to ensure that all 48 specific actions are accomplished. Only 12 of the 76 Plans we found on file at CTS and EOUSA addressed at least half of the 48 actions. Just 4 of the 76 Plans addressed them all. Eleven USAOs simply inserted their name into a five-page “model” plan issued by EOUSA as a format guide. Three of the Plans addressed none of the 48 actions because the USAOs had submitted documents other than critical incident response plans to meet their CMC Program requirements (for example, one USAO submitted the emergency evacuation plan for its building).

Moreover, we found that USAOs generally do not follow the standard crisis preparedness practice of conducting regular critical incident response exercises. While 20 of the 94 USAOs participated in at least one of 23 exercises sponsored by the FBI’s Crisis Management Unit that were appropriate for USAO participation, and other USAOs participated in exercises sponsored by other federal, state, and local preparedness agencies, exercise participation was the exception rather than the rule. Conducting regular exercises, both within a USAO and with other agencies, to practice crisis response procedures is important to ensure a coordinated and competent response to an actual critical incident. However, in responding to a survey that we conducted during this review, over 60 percent of the 81 CMCs who replied indicated that their USAOs had conducted no exercises since 1996, and an additional 20 percent responded that they had conducted just one exercise during that time. Only 17 percent indicated that their offices had conducted more than one exercise since 1996.

The USAOs’ failure to effectively implement the CMC Program was not corrected because CTS and EOUSA did not administer and support the Program. The CMCs received only limited training, consisting primarily of two national conferences held in 1997 and 1999. CTS provided no further training from 1999 until March 2003, when it sponsored a 2-hour videoconference. CTS and EOUSA also provided only minimal guidance to the CMCs, and did not keep the guidance up to date as changes in departmental and national policy occurred. CTS and EOUSA further failed to track the receipt of the Plans and to properly maintain them on file.

CTS has maintained a significant training effort in support of the ATTFs, but we found that training provided for ATTFs generally focused on preventing terrorist attacks, rather than on how to respond to attacks that occur. Our interviews with CMCs, including 10 who were also ATTF Coordinators, confirmed that the training provided to date, including the ATTF training, did not meet most of the specific needs of the CMCs.

When we questioned the lack of CMC-specific training over the previous four years, CTS told us that national CMC training had been planned for Fall

2001 or Spring 2002. This training was initially deferred after the events of September 11, 2001, to accommodate other training requirements mandated by the Attorney General. The training was then deferred further because many of those who would have been the trainers or trainees were involved in the nationwide investigation of the terrorist attacks. CTS told us that additional preparedness and response training for CMCs is now scheduled for March 2004.

Although most USAOs submitted their Plans to CTS and EOUSA as required, CTS's review was not thorough.⁵ Beginning in early to mid-2000, four CTS attorneys reviewed the Plans on file in order to draft a model plan. Each of the attorneys reviewed approximately 10 plans in conjunction with their work on drafting the model plan. Approximately 5 to 10 plans were identified as having "best practices" or provisions worthy of inclusion in a revised model plan that would address content, not just format. However, CTS never provided feedback to each USAO on its individual plan and, as a result, USAOs continued to rely on Plans that substantially failed to address the fundamental actions for responding effectively to a critical incident. A revised model plan was issued in May 2003 and in August 2003 USAOs reported that they were in the process of revising their Plans.

We also found that the description of CMC Program implementation included in the Department's Annual Performance Reports was overstated. In its FY 2000 Performance Plan, as a part of the strategic objective to "Improve Response Capabilities to Terrorists' Acts," the Department set a goal of having Plans in place at 90 of the 94 USAOs by the end of FY 2002.⁶ In FY 2001, based on an e-mail survey conducted by EOUSA, the Department reported that 88 USAOs had completed their Plans. In addition, several Performance Reports also contained a narrative detailing the performance of the program.⁷ The narrative provided specific information indicating that: 1) all 88 Plans had been submitted by the USAOs and evaluated by CTS; 2) the Plans met the criteria for a complete Plan and provided a framework for responding to terrorist attacks and other critical incidents, including a crosswalk to FBI and other

⁵ After the completion of our fieldwork, CTS provided the inspection team with the name of a former staff attorney who said he reviewed all of the Plans that were submitted as of the end of September 1999. When interviewed, he told us that he did not recall the exact number of Plans reviewed nor did he write up individual Plan reviews, but his overall assessment was that the Plans were not detailed and were generally of poor quality. He also told us that he informed the Deputy Chief, CTS, of his findings, but CTS took no action.

⁶ Department of Justice, FY 2000 Performance Report & FY 2001 Performance Plan, April 2001, page 29.

⁷ Department of Justice, FY 2001 Summary Performance Report, February 2000; Department of Justice, Department of Justice, FY 2000 Performance Report & FY 2001 Performance Plan, April 2001; Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final, /FY 2004 Performance Plan, February 2003.

response plans; and 3) the Department was providing continuing support to the CMC Program.

Our review found that information to be inaccurate. Not all of the Plans were actually submitted; the vast majority of Plans were not comprehensive in their guidance, did not provide a framework for the USAOs' response and did not contain a crosswalk to the FBI's or other response plans; and CTS and EOUSA had not adequately supported the CMC Program. Moreover, our discussions with CTS officials found that their own reviews had identified the shortcoming of the Plans. Nonetheless, in FY 2001 the Department declared the performance measure "met," and eliminated the performance measure from future Annual Performance Reports.⁸

While the first priority of the Department is the prevention of terrorism, a commensurate need exists to respond effectively to critical incidents that are not prevented. As stated in the Department's FY 2003 and FY 2004 Performance Plans, "to effectively address international and domestic terrorism, [the Department] must concentrate on both prevention and response."⁹ Despite the enormous efforts undertaken by federal, state, and local law enforcement agencies – including the work of the ATTFs to disrupt terrorist organizations and prevent terrorist attacks – Attorney General John Ashcroft recently reiterated that the United States continues to face a "very real potential" of another terrorist attack.¹⁰ The failure of the USAOs, CTS, and EOUSA to fully implement the CMC Program leaves the Department less prepared than it could be – and should be – to respond to critical incidents.

In March 2003, CTS recommended that the CMC Program be incorporated into the ATTF/ATAC initiative. The recommendation was approved October 17, 2003. Although placed under the ATACs, the CMCs "will remain responsible for the creation, implementation, maintenance and exercise of their district's crisis response plan...."¹¹ However, the ATACs are only responsible for responding in the event of terrorist attacks, not other critical incidents. It is not clear whether the ATACs' responsibilities will be expanded to include non-terrorist critical incidents, or whether the CMCs are still

⁸ Department of Justice, FY 2001 Summary Performance Report, page 223, Appendix A – Discontinued Measures Performance Report.

⁹ Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final Performance Plan/FY 2004 Performance Plan, page 1.

¹⁰ Attorney General John Ashcroft, *Fox News Sunday*, August 3, 2003.

¹¹ Memorandum from Guy Lewis, Director, EOUSA, to All United States Attorneys, "Merger and Realignment of Crisis Management Coordinators Program Under Anti-Terrorism Advisory Council," October 17, 2003.

responsible for responding to non-terrorist critical incidents separately. Therefore, it is unclear how the realignment of the CMCs may affect the USAOs' ability to respond to critical incidents, especially those that are not terrorist-related. As this review showed, the need to prepare for all critical incidents has not been met. Therefore, we provide ten recommendations to improve the preparedness of the USAOs to respond to critical incidents.

We recommend that the Deputy Attorney General:

1. Ensure that performance measures are developed to assess the readiness of USAOs to respond to critical incidents.

We recommend that all United States Attorneys:

2. Revise the critical incident response plans to address the action items identified by CTS, and regularly update the plans to reflect changes in law, departmental policy, or local procedures.
3. Conduct and participate in periodic exercises to test the critical incident response plans and practice responding to critical incidents.
4. Establish workload-reporting procedures that capture the time dedicated to critical incident response planning duties.

We recommend that the Assistant Attorney General, Criminal Division:

5. Provide updated training and guidance to USAOs on how to prepare effective and comprehensive critical incident response plans. The guidance should reflect changes in legislation, policy, and critical incident response practice that have taken place since September 11, 2001.
6. Review all USAOs' Plans, including revisions, to ensure that the Plans cover all critical areas; provide individualized feedback to USAOs; and periodically report to the Deputy Attorney General on the status of the USAOs' Plans.
7. Provide USAOs with training and guidance on how to develop and conduct appropriate critical incident response exercises, either independently or in conjunction with the FBI or other offices.
8. In conjunction with EOUSA, complete the development of a website containing information on critical incident response, including lessons learned, exercise scenarios, and best practices.

We recommend that the Director, EOUSA:

9. Establish a system for accurately tracking and reporting the status of USAO submissions and updates to critical incident response plans.
10. With advice from CTS, revise the operations review process to include a full evaluation of the preparedness of USAOs to respond to critical incidents.

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INTRODUCTION

After several highly publicized failures to respond effectively to critical incidents, in 1996 the Attorney General directed the Department of Justice (Department) to implement a Crisis Management Coordinator Program (CMC Program). The CMC Program required United States Attorneys' Offices (USAOs) to improve their preparedness to respond "quickly and appropriately" to critical incidents by developing critical incident response plans. The Attorney General directed the USAOs to implement the CMC Program, and the Criminal Division's Counterterrorism Section (CTS) and the Executive Office for United States Attorneys (EOUSA) to administer and support the Program. We conducted this review to determine whether the USAOs have acted to improve their ability to respond quickly and appropriately to critical incidents by developing comprehensive critical incident response plans, training staff to carry out the Plans, and exercising the Plans.

Background

Responding quickly and appropriately when critical incidents occur is an essential part of the Department's mission, as well as an integral part of the Department's strategy for protecting the nation from terrorism. Problems encountered during prior critical incidents – such as the Branch Davidian standoff in Waco, Texas, the Oklahoma City bombing, and natural disasters like Hurricane Andrew – resulted in significant congressional and public scrutiny of the Department's actions. After-action reports on these and other critical incidents identified serious mistakes by the Department in areas such as communication and coordination between negotiating and tactical elements, personnel availability, crime scene management and evidence collection, and use of deadly force.

Critical Incidents

Critical incidents include acts of terrorism, group defiance of governmental authority, hostage situations, and natural disasters. Typically, these events involve one or more of the following factors (although the presence of one factor by itself does not automatically mean that incident is critical):

- Involves threats or acts of violence against government or social institutions.
- Involves significant loss of life, significant injuries, or significant damage to property.
- Demands use of substantial resources.
- Attracts close public scrutiny through the media.
- Requires coordination among federal law enforcement agencies (more so than usual), state or local law enforcement agencies, local or state prosecutors, emergency relief services, and/or emergency response services.
- Requires ongoing communication with upper level personnel at the Department of Justice.

Source: OIG review of USAOs' critical incident response plans.

Selected Critical Incidents and Federal Actions, 1988 – 2003

<u>INCIDENTS</u>	<u>DATE</u>	<u>FEDERAL ACTIONS</u>
	Dec 1988	- DOJ Crisis Management Plan
	Oct 1989	- DOJ National Security Emergency Preparedness Program
Ruby Ridge -	Aug 1992	
Hurricane Andrew -	Aug 1992	
World Trade Center Bombing -	Feb 1993	
Branch Davidian Stand-Off -	Feb–Apr 1993	
	Apr 1994	- FBI Critical Incident Response Group (CIRG)
Oklahoma City Bombing -	April 1995	
	Jun 1995	- PDD 39, “U.S. Policy on Counterterrorism”
	Jan 1996	- Attorney Critical Incident Response Group
Freemen Standoff -	Mar–Jun 1996	
	May 1996	- USAO Crisis Management Coordinator Program
	May 1998	- PDD-62, “Protection Against - Unconventional Threats to the Homeland and Americans Overseas”
Terrorists attack World Trade Center and Pentagon -	Sep 2001	
	Sep 2001	- DOJ Anti-Terrorism Plan
	Oct 2001	- Deputy AG issues “Guidance for Anti-Terrorism Task Forces”
	Oct 2001	- USA PATRIOT ACT passed by Congress
Anthrax attacks: New York, Washington DC, and Florida -	Oct 2001	
	Oct 2001	- Interagency Domestic Terrorism Concept of Operations Plan
	Nov 2001	- Anti-Terrorism Task Forces established in USAOs
	Nov 2001	- Blueprint for Change, A Plan to Reshape the Department and Its Components to Focus on Anti-Terrorism
	Jul 2002	- National Strategy for Homeland Security
	Nov 2002	- Reorganization of the Criminal Division
	Feb 2003	- Homeland Security Presidential Directive

Source: OIG review of departmental and other documents.

See Appendix D for a more detailed chronology of critical incident events.

Since 1988, at least 16 initiatives – 11 departmental and 5 other federal or legislative – have focused on correcting past deficiencies and improving the ability of the Department (and other federal agencies) to respond to critical incidents (the Table above). Between 1988 and 1996, these initiatives established requirements for periodic exercises of emergency operating plans, and assigned EOUSA responsibility for overseeing the emergency preparedness of the USAOs, including developing critical incident response training.¹² In May 1996, the Attorney General directed that each United States Attorney establish a CMC Program, and prepare Plans as an integral part of the overall preparedness effort of each office.¹³

¹² DOJ Order 1900.6A, Department of Justice Crisis Management Plan, 1988; DOJ Order 1900.5A, National Security Emergency Preparedness Program, 1989; Memorandum from Merrick Garland, Principal Associate Attorney General, et al., to the Attorney General, “Attorney Critical Incident Response Group,” January 11, 1996.

¹³ Critical Incident Response Plan, Decision Memorandum from Merrick Garland, Principal Associate Attorney General to the Attorney General, May 23, 1996, and approved on May 24, 1996.

Recent initiatives reinforce that being prepared to respond to critical incidents is still one of the primary objectives of the Department. For example, the Department's Anti-Terrorism Plan (2001) and the National Strategy for Homeland Security (2002) were implemented to update the strategic objectives for the Department in the aftermath of the September 2001 terrorist attacks. Each of those initiatives identifies three major strategic objectives for the Department, one of which is to respond effectively to critical incidents. Specifically, the initiatives direct the Department to ensure national security by:

- serving as an organizational structure for a coordinated response to acts of terrorism (Department's Anti-Terrorism Plan), and
- minimizing the damage and leading the recovery from attacks that do occur (National Strategy for Homeland Security).

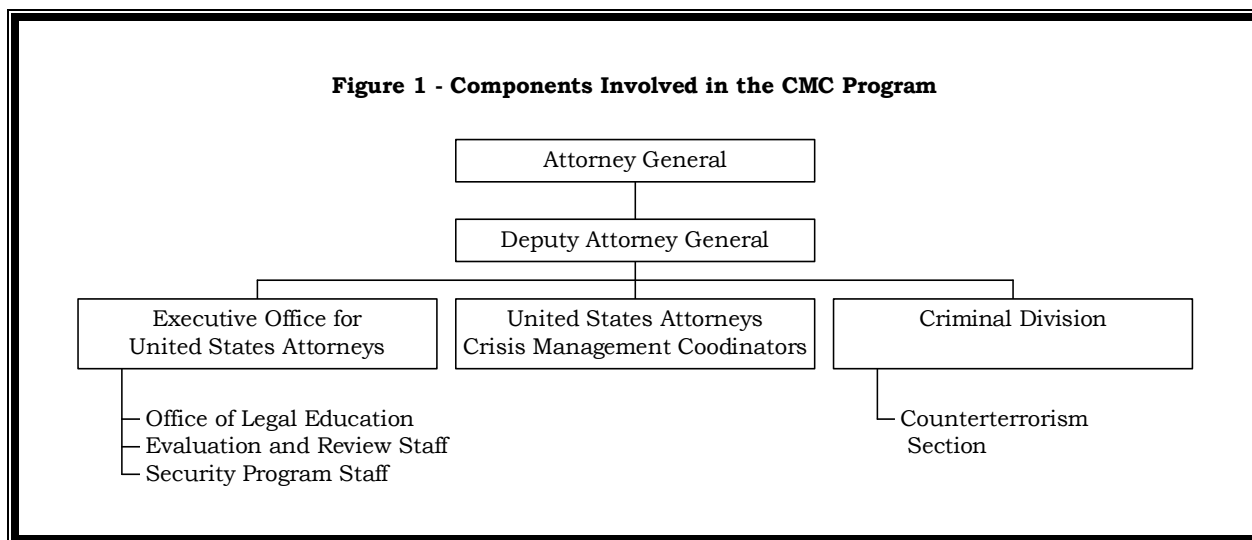
CMC Program. The CMC Program is designed to improve the ability of the USAOs to accomplish their statutory responsibilities while responding quickly and appropriately to critical incidents.¹⁴ Specifically, implementing better planning and preparation for responding to critical incidents was intended to improve USAOs' performance in legal and procedural crisis response; enhance USAOs' coordination with law enforcement and emergency response agencies; ensure the identification and organization of resources needed to respond to a critical incident (e.g., personnel, equipment, information); and improve the USAOs' anticipation of likely crisis situations.¹⁵

Each USAO was to improve its performance in a critical incident by developing plans to clarify department-wide notification procedures, district office resources, headquarters' response, and the command and control process during a critical incident. In addition, the Attorney General directed that CTS and EOUSA administer and provide support to the CMC Program.¹⁶ The specific duties assigned to the USAOs, CTS, and EOUSA are described in the following sections. Figure 1 shows the components involved in the CMC Program.

¹⁴ Each of the 93 United States Attorneys is the chief federal law enforcement officer within his or her jurisdiction, and serves as the principal litigator under the direction of the Attorney General.

¹⁵ Attorney General's speech to CMCs at the first national training conference, June 17, 1997, page 7.

¹⁶ Effective December 1, 2002, the Terrorism and Violent Crime Section was reorganized into the Counterterrorism Section (CTS) and the Domestic Security Section (DSS).



Source: Organization Charts for the Department of Justice, EOUSA, and Criminal Division, July 2003.

United States Attorney and Crisis Management Coordinator responsibilities. In the event of a critical incident, the United States Attorney is the on-scene legal decision maker responsible for managing the Department's response by, among other things:

- facilitating coordination and communication with federal, state, and local officials and prosecutors,
- preparing and securing search warrants,
- assisting law enforcement personnel in interviewing witnesses,
- making legal decisions, such as granting immunity,
- appearing before grand juries, and, when necessary,
- advising law enforcement personnel on collecting and preserving evidence.

To coordinate and plan each USAO's response to a critical incident, the Attorney General directed each United States Attorney to select a senior Assistant United States Attorney (AUSA) to be the Crisis Management Coordinator (CMC) and directed that at least one AUSA at each USAO receive crisis response training. The CMCs for each USAO were directed to submit to EOUSA a Plan describing how the USAO would manage responsibilities during a critical incident. The CMCs were directed to coordinate the development and implementation of their Plans with appropriate federal, state, and local law enforcement and emergency response agencies, and participate in crisis response exercises with law enforcement and emergency response agencies.

These Plans serve as the foundation upon which USAOs will base their response to a critical incident. It was the CMCs' responsibility to identify the resources required for their USAOs to respond quickly and appropriately to a critical incident.

While developing a Plan does not guarantee a flawless response to a critical incident, being prepared makes it more likely that a successful response will be achieved. As former Attorney General Janet Reno stated in a June 17, 1997, speech delivered to CMCs at the first CMC Training Conference held in Arlington, Virginia:

By being thoroughly prepared to deal with all aspects of a crisis, which can reasonably be anticipated, investigators and prosecutors free themselves to concentrate on those unique aspects of the crisis, which could not have been anticipated.... Advance preparation needs to be focused through the development of a written crisis response plan in each U.S. Attorney's Office.

CTS and EOUSA's responsibilities. To implement the CMC Program, Attorney General Reno assigned CTS to review the Plans submitted by the USAOs for content and quality and provide feedback to each district; EOUSA was assigned to monitor timely Plan submission and Plan updates. To support the CMC Program, the Attorney General directed CTS, in conjunction with EOUSA, to develop and ensure training for the CMCs. The Attorney General stressed "training and advanced planning are imperative" given the intense time constraints and public attention during a critical incident. Specifically, CTS was to provide CMCs training in:

- coordination with law enforcement and emergency response agencies,
- legal and procedural crisis response, and
- specific planning to identify and organize resources, as well as anticipate likely crisis situations.

The direction for CTS and EOUSA to develop training was reiterated on October 21, 1999,¹⁷ and in the Department's FY 2002 Performance Report:

In the area of preparation for and response to acts of terrorism, the Terrorism and Violent Crime Section [now CTS] is responsible for administering the Department's Attorney Critical

¹⁷ Memorandum for the Attorney General from the Deputy Attorney General, "U.S. Attorney's Offices' Preparedness to Address Critical Incidents," October 21, 1999, page 4.

Incident Response Group and its Crisis Management Coordinators program, which involves the development of a crisis response plan for each federal judicial district and the training of specially selected federal prosecutors from the U.S. Attorneys' offices and the DOJ litigating divisions in crisis preparation and response techniques.¹⁸

CMC Training Conferences. Since the inception of this CMC Program in 1996, CTS and EOUSA, through the Office of Legal Education, have held two CMC Training Conferences. The first conference took place in Arlington, Virginia, from June 17 through 20, 1997. At the Conference, the CMCs received information on the availability of cross-training crisis response exercises with the FBI and how to develop a Plan. The second conference took place in Columbia, South Carolina, from October 19 through 22, 1999. CMCs received contact information and general information on exercising Plans and preparing a portable "office in a box" (containing, for example, frequently used legal forms on a CD-ROM, cell phones for communications capabilities).¹⁹

Subsequent to the initiation of the OIG review, CTS held a two-hour Crisis Management Coordinators Videoconference through the Justice Television Network on March 26, 2003. The videoconference consisted of a briefing by a CTS Deputy Director and a senior litigation specialist. They discussed with the CMCs the existing documentation and information available on *USABook Online*, an internal Department of Justice website for USAOs. They also suggested that CMCs review their Plans and integrate them with the District Office Security Plan and the Anti-Terrorism Task Force (ATTF) Plan.

During this review, CTS told us that national CMC training had been planned for Fall 2001 or Spring 2002. This training was initially deferred after the events of September 11, 2001 to accommodate other training requirements mandated by the Attorney General and then deferred further because many of those who would have been the trainers or trainees were involved in the nationwide investigation of the terrorist attacks. CTS told us that additional preparedness and response training for CMCs is scheduled for March 2004.

CMC Manual. At the 1999 training conference, CTS gave the CMCs a "Crisis Management Coordinator's Manual" in both hardcopy and on CD-ROM. The CMC Manual provides legal and practical guidance on how to respond to critical incidents. Developed by CTS, the CMC Manual provides over 100 pages

¹⁸ Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final Performance Plan/FY 2004 Performance Plan, Strategic Objective & Annual Goal 1.2 –1.3: Investigate and Prosecute Terrorist Acts, page 3.

¹⁹ See Appendix B for a more detailed description of training content.

of detailed critical incident response information specific to the CMC Program. The second chapter of the CMC Manual contains a list of CTS-recommended action items that USAOs should take within the first 48 hours of a critical incident. The CMCs also received an electronic copy of the Attorney Critical Incident Response Group Form Book, which contains typical forms that may be needed when responding to a critical incident.

SCOPE AND METHODOLOGY

Review of Critical Incident Response Plans

We began this review in December 2002 and completed our work in October 2003. We reviewed the 76 Plans available at EOUSA's and CTS's offices to determine whether USAOs submitted Plans as required, the timeliness of the Plan submissions, and the overall quality and content of the Plans. We assessed the quality and content of the Plans using the "Crisis Incident Checklist For Initial 48 Hours" (48-Hour Checklist) contained in Chapter Two of the CMC Manual. The 48-Hour Checklist contained 10 categories of specific action items compiled by CTS to guide USAOs in developing their Plans for responding to a critical incident. The action items cover every aspect of USAO critical incident response, from notifying the Attorney General or Deputy Attorney General that an incident has occurred to coordinating with state and local emergency response agencies. We identified 48 specific actions contained in the checklist.²⁰

Before we used the 48 specific actions as the basis for evaluating the Plans on file, we examined whether those recommended actions remained valid responses and whether the list as a whole represented a reasonably complete approach to responding to a critical incident. Based on our examination, which consisted of the three steps described below, we verified that the approach to incident response delineated by the 48-Hour Checklist was reasonably complete and valid criteria for evaluating the USAOs' critical incident response plans.

We began our examination of the 48-Hour Checklist by confirming that it was the guidance given to the CMCs on what to include in a critical incident response plan. We confirmed that:

- CTS identified the 48 action items as important tasks to be accomplished in a crisis situation,
- the CMCs were informed of the 48 action items at the 1999 CMC training conference, as part of the CMC Manual they were given to guide the implementation of the Program within their district, and
- the 1999 CMC Manual, particularly Chapter 2, was the latest, most detailed, and most comprehensive information provided to CMCs on how to develop Plans.

²⁰ See Appendix A for a list of the 48 action items.

Subsequent to our fieldwork for this review, in May 2003, CTS issued a revised “Guide to Developing a Crisis Response Plan” that included the same 48-Hour Checklist, further confirming that the 48 actions remain the current guidance on the fundamental steps to take in responding to a critical incident.

To assess the completeness of the range of actions included on the 48-Hour Checklist, we compared the 48 action items to deficiencies noted in past FBI after-action reports from critical incidents, including:

- Ruby Ridge (1992),
- Branch Davidian Stand-off (1993),
- World Trade Center Bombing (1993),
- Murrah Federal Building, Oklahoma City (1995), and
- Freeman Stand-off (1996).

Our assessment showed that the 48-Hour Checklist includes steps to address the recommendations in the above reports. For example, one of the major findings in the after-action report on Ruby Ridge was that on-scene personnel made mistakes in judgment as a direct result of fatigue because there was no plan to provide relief personnel and adequate rest periods for those conducting the operation. The 48-Hour Checklist clearly states that USAOs should “Plan relief shift[s] of AUSAs with preset period[s] of overlap to facilitate continuity.”

The after-action reports on the bombings of the World Trade Center in 1993, and the Oklahoma City Murrah Federal Building in 1995, found problems with evidence collection and preservation. The Checklist addresses those areas by stating that Plans should include how USAOs will:

- preserve the crime scene consistent with life-saving requirements,
- ensure that there is a single, coordinated crime scene protocol and that no crime scene search is undertaken independent of that protocol,
- implement a crime scene protocol, which includes guidance to ensure the orderly presentation of evidence at trial through a limited number of witnesses (e.g., search team leaders), and

-
- establish a single, unified evidence room with clear understanding of management and chain of custody procedures.²¹

Finally, during our interviews with 26 CMCs and the Deputy Chief, CTS, we asked their opinions as to whether the 48 actions remained the appropriate actions to take in response to a critical incident and whether the range of actions was reasonably complete. The CMCs we interviewed confirmed that the 48 actions remained valid and reasonably complete, although they indicated that the list could be expanded to reflect changes that have occurred since September 11, 2001.

USAO Critical Incident Response Survey

Because the scope of our review encompassed the implementation of the CMC Program at all 94 USAOs, we conducted a survey of all offices to determine the following:

- which USAOs filed their Plan with EOUSA or CTS,
- how many times the offices exercised their Plans in a simulated critical incident since 1996, the year the CMC Program began,
- the number of actual critical incidents at the office since 1996,
- the location of any post-exercise or post-incident reports, and
- additional critical incident commentary.

We received completed surveys from 81 of the 94 USAOs, an 86 percent response rate. The data we collected allowed us to determine how many survey respondents exercised or activated their Plans, how many found their Plans effective, and how many updated their Plans. The comments CMCs provided supplemented the survey responses. A copy of the survey is included in Appendix C.

²¹ The critical nature of evidence management related to the Oklahoma City bombing came to the forefront again, long after the actual incident, when on May 11, 2001, the Department announced that it would postpone the execution of Timothy McVeigh, after confirming the existence of approximately 3,100 pages of previously undisclosed evidence.

Interviews with Crisis Management Coordinators

We conducted in-person and telephone interviews with a structured sample of CMCs at 26 USAOs across the United States. Our interview sample included five CMCs each from among USAOs that:

- did not respond to our survey,
- did not exercise, but responded to an actual incident,
- did exercise, but did not respond to an actual incident,
- neither responded to an actual incident nor exercised their Plans, and
- both responded to an actual incident and activated their Plans.

In addition, we interviewed the CMC for the USAO for the District of Columbia because it is frequently involved in responding to critical incidents and handles both federal and local prosecutions.

Interviews with EOUSA, Criminal Division, CTS, and FBI

As part of our review, we interviewed EOUSA, Criminal Division, CTS, and FBI officials who have critical incident response oversight responsibilities. Our interviews with EOUSA included the Assistant Director for Operations; the Assistant Director for Security Programs Staff; the Assistant Director for Evaluation and Review Staff; and the Attorney Advisor for the Office of the Director. At the Criminal Division, we interviewed the Deputy Assistant Attorney General responsible for CTS. At CTS, we interviewed the Chief, Principal Deputy Chief, Deputy Chief, and six of the eight Anti-Terrorism Task Force Regional Coordinators. At the FBI, we interviewed the SAC, the Assistant SAC, the Unit Chief, and the Supervisory Special Agent of the CIRG Crisis Management Unit.

Review of Background Information

We reviewed the Department's Crisis Management Plan (DOJ Order 1900.6A), December 12, 1988; Attorney Critical Incident Response Group (ACIRG) Decision Memorandum, January 11, 1996; Critical Incident Response Plan Decision Memorandum, May 23, 1996; and the Attorney General's speech to CMCs on June 17, 1997. We reviewed training materials for the 1997 CMC National Training Conference held in Arlington, Virginia, and the 1999 conference held at the National Advocacy Center in Columbia, South Carolina. We reviewed the Status of USAOs' Preparedness to Address Critical Incidents memorandum, October 21, 1999; EOUSA's request to review Crisis Response

and Disaster Recovery Response Plans memorandum, October 15, 2001, and the corresponding USAO responses; DOJ Fiscal Year (FY) 2001-2006 Strategic Plan, November 2001; DOJ FY 2001 Performance Plan, February 2000; DOJ FY 2002 Performance Report, FY 2003 Revised Final Performance Plan, FY 2004 Performance Plan, February 28, 2003; and other appropriate documents. Additionally, we consulted books and articles on critical incident response practice and theory.

Critical Incident Exercise Observation

We also observed a weapons of mass destruction exercise, “Operation Furies,” in Alexandria, Virginia, conducted on February 8, 2003. Operation Furies was a full-scale critical incident response exercise involving more than 400 rescue workers, law enforcement officers, and military personnel, along with volunteer role players from the surrounding residential area and the USAO for the Eastern District of Virginia.

RESULTS OF THE REVIEW

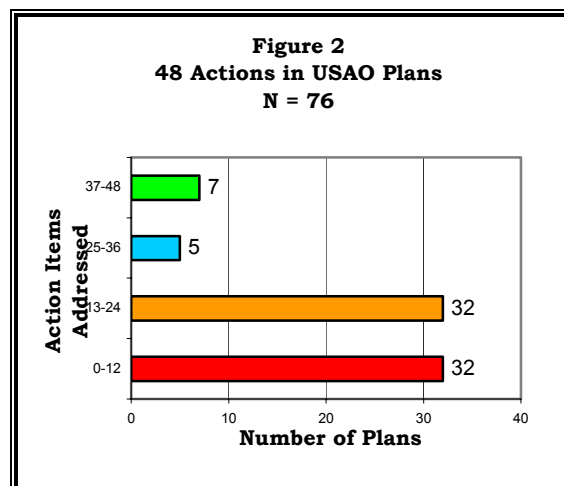
Most USAOs have not prepared comprehensive Plans to guide their response to critical incidents. The Plans prepared by USAOs overwhelmingly failed to address the 48 actions identified by CTS as fundamental to respond effectively to critical incidents and avoid past mistakes. Further, most USAOs have never conducted critical incident response exercises. CTS and EOUSA failed to carry out their administrative and support responsibilities to conduct training, provide guidance, track and maintain the USAOs' Plans, and review and provide feedback on the Plans to the USAOs. The failure by the USAOs to implement the CMC Program was neither corrected nor reported to the Attorney General. Moreover, the Department reported in its annual Performance Report that the CMC Program had met its objectives to improve the Department's preparedness, when it had not.

Most USAOs Have Not Prepared and Exercised Comprehensive Plans to Guide Their Response to Critical Incidents

Most USAOs failed to prepare comprehensive critical incident response Plans. Our analysis showed that the Plans submitted by the USAOs provide inadequate guidance to respond to a critical incident. The 48 actions that should be taken when responding to a critical incident were contained in the 1999 CMC Manual. The actions address essential elements of critical incident response, including coordinating interviews to avoid multiple agency interviews of the same person, providing for a unified evidence room and communicating chain of custody procedures, establishing a crime scene protocol, preserving the crime scene, and setting up overlapping relief shifts to avoid fatigue.

We analyzed the 76 Plans available at CTS and EOUSA and found that most Plans substantially failed to include instruction to ensure that USAO staff responding to a critical incident accomplishes the 48 fundamental actions. Only 12 of the 76 Plans on file addressed at least half of the 48 actions, and just 4 Plans addressed all 48 actions (Figure 2, next page). Many of the omitted actions represent vital elements of an effective critical incident response. For example, of the 76 Plans:

- 67 failed to address coordination of interviews to avoid multiple agency interviews of the same person,
- 61 did not provide for a unified evidence room and communicating chain of custody procedures,
- 60 did not address establishment of a crime scene protocol,
- 54 did not address preservation of the crime scene, and
- 32 failed to address setting up overlapping relief shifts to avoid fatigue among AUSAs working a critical incident.



Source: OIG review of Plans on file with CTS & EOUSA.

In some cases, the Plans did not represent even a minimal attempt to develop critical incident guidance. Eleven USAOs did nothing more than insert their District's name into a "Sample Plan" distributed by EOUSA and attach contact lists from their office and several other agencies.²² In three other cases, the USAOs submitted documents *other* than a critical incident response plan. These documents included an Occupant Emergency Plan, an Emergency Relocation Plan, and a "Plan" comprised of handouts from a January 1999 FBI-sponsored workshop on Weapons of Mass Destruction.²³

Developing Plans that address all 48 actions is essential to ensure a comprehensive response to a critical incident and to avoid repeating missteps that were identified in after-action reports on earlier critical incidents. For example, the need for action to establish a crime scene protocol and better preserve the crime scene were identified in the Oklahoma City after-action report. The need to plan for overlapping relief shifts to avoid fatigue and the potential for poor decision-making that may result from fatigue was

²² The Sample Plan did not contain specific guidance on how to respond to critical incidents, but was a format guide intended to help the USAOs in developing their own Plans. The Sample Plan is discussed further on page 21.

²³ Occupant Emergency Plans provide for either the rapid evacuation of a building or sheltering in place within the building, depending on the nature of the incident that triggered the plan. Emergency Relocation Plans provide for the continuation of all essential organizational activities in secondary locations because the primary location has become unusable. These plans are required for USAOs, but they address activities in a context other than crisis response, as defined in the CMC Program.

recommended in the Ruby Ridge after-action report. Failing to develop Plans that ensure these and other actions are accomplished increases the risk that USAOs will respond incompletely or ineffectively to critical incidents. While the absence of a Plan does not preclude a USAO from responding to a critical incident, having a Plan that guides responders through all 48 fundamental actions ensures that the USAO is better prepared to respond quickly and appropriately to a critical incident.

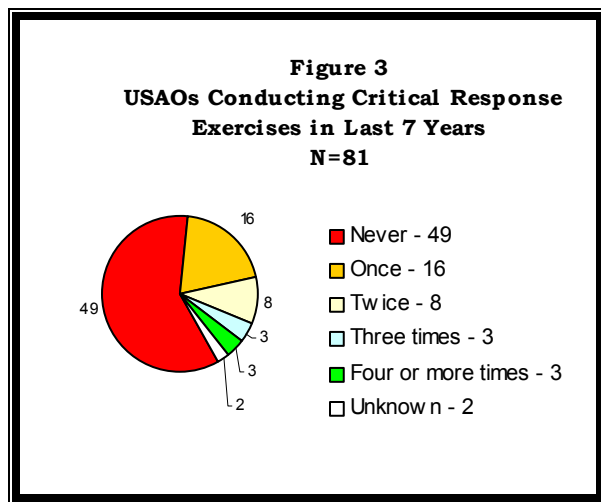
Planning to respond to critical incidents was not a priority for USAOs.

Based on the quality of the Plans, as well as our discussions with CMCs, we concluded that the CMC Program was not a priority for the USAOs. In our interviews with 26 CMCs at the USAOs, we were consistently told that more attention was given to competing priorities and that the CMCs' workload was not adjusted to allow time for Plan development and CMC Program implementation. Several CMCs noted that there is no applicable category on their work tracking system to account for the time they spend on CMC duties. Therefore time spent on CMC Program related activities does not get reported as time spent directly on work that contributes to overall office performance.

During our review, the Deputy Director, Security Program Staff, acknowledged some confusion concerning the overall security planning effort within USAOs. The confusion was the result of different directives that require USAOs to draft and maintain six plans for separate but related purposes, many of which overlap in key areas. To bolster preparedness and eliminate confusion, in July 2003 EOUSA recommended that USAOs draft a core plan with individualized annexes targeting specific purposes, such as crisis response, continuity of operations, occupancy emergencies, and emergency relocation. A Security Working Group (SWG) comprised of U.S. Attorneys and EOUSA senior staff is responsible for promulgating the appropriate guidelines. These actions are an indicator of EOUSA's effort to be more responsive to the confusion created by overlapping plans.

Most USAOs have never conducted critical incident response exercises. Over 60 percent (49 of 81) of the USAOs responding to our survey

reported that they conducted no critical incident response exercises since 1996. Another 20 percent (16 USAOs) conducted one exercise during that time. Only 17 percent (14 USAOs) conducted more than one exercise in the last 7 years (Figure 3).



Source: OIG administered survey of CMCs

The expectation that USAOs would exercise their Plans was clearly enunciated in 1997 by the former Attorney General. In speaking to all CMCs, she stated that USAOs should participate in

regional critical incident response exercises with their local FBI field offices because: “The first tense hours after a bomb has exploded should not be spent on trying for the first time to build a working relationship with your key law enforcement agency. It is too little, too late.”²⁴

However, in promulgating the CMC Program, CTS and EOUSA did not establish any specific requirements for USAOs to conduct exercises to test their Plans and practice responding to critical incidents. Consequently, as detailed above, only a few USAOs have regularly conducted critical incident response exercises.²⁵

We found that exercising plans is standard practice for emergency response programs. For example, Federal Preparedness Circulars (FPC) 65 and 66, which direct all Federal agencies to develop continuity of operations plans to maintain agency operations in the event of catastrophes, require that the plans be exercised at least annually.²⁶

ODP: Exercises Are An Essential Part of Critical Incident Response

Experience and data show that exercises are a practical and efficient way to prepare for crises. They test critical resistance, identify procedural difficulties, and provide a plan for corrective actions to improve crisis and consequence management response capabilities without the penalties that might be incurred in a real crisis. Exercises also provide a unique learning opportunity to synchronize and integrate cross-functional and intergovernmental crisis and consequence management response.

ODP Website, (visited on April 29, 2003)
<http://www.ojp.usdoj.gov/odp/exercises/state.htm>

Similarly, within the Department, the FBI (which also prepares critical incident response plans) requires its field offices to conduct annual crisis response exercises. We contacted the Department’s Office of Domestic Preparedness (ODP), which helps state and local agencies prepare to respond to critical incidents, and found that between May 2000 and March 2003, that office sponsored over 150 crisis response exercises.²⁷ The Acting Director of

²⁴ The Attorney General’s speech at first CMC National Training Conference, June 17, 1997.

²⁵ CTS did encourage USAOs to participate in preparedness exercises conducted by the FBI and by other federal and state and local agencies in their region. At both national conferences, CTS distributed a list of exercises organized geographically to facilitate USAO involvement in crisis response and preparedness training. This list contained numerous exercises sponsored by ODP.

²⁶ FPCs 65 and 66 were issued by the Federal Emergency Management Agency, on July 26, 1999, and April 30, 2001, respectively.

²⁷ The Office of Domestic Preparedness, which assists state and local public safety personnel in acquiring training and equipment to manage the response to weapons of mass destruction attacks, moved from the Department of Justice, Office of Justice Programs, to the Department of Homeland Security on March 1, 2003.

ODP, and the Director, Exercise and Evaluation Division, ODP, told us that preparedness depends on exercising critical incident response plans, as well as updating and revising the Plans to reflect lessons learned. An ODP official told us that, “Having a Plan and not exercising or revising it is the same as not having a Plan.”

Importantly, although few USAOs conducted exercises, most CMCs that did conduct exercises reported that they were helpful in establishing sound operational procedures to respond to a critical incident. We interviewed five of the six CMCs from USAOs most directly impacted by the events of September 11, 2001, who confirmed the need for conducting regular Plan exercises and updating Plans. The CMCs all told us that, based on their experience, well-exercised Plans save lives, property, and other assets.

While we found that most USAOs do not regularly conduct critical incident exercises, some USAOs did participate in exercises led by the FBI’s Crisis Management Unit (CMU). The Supervisory Special Agent (SSA) for the FBI CMU informed us that, in the 33 months from January 1999 to September 2001, USAOs participated in 20 of 23 FBI-sponsored exercises where USAO participation would have been appropriate.²⁸ The exercises took place throughout the country and involved USAOs of all sizes. Scenarios ranged from a full-scale mock airliner hijacking in Anchorage, Alaska, to a weapons of mass destruction tabletop exercise in Pomona, New York. While the USAOs participated in the FBI CMU exercises when they had the opportunity, we noted that, in the 33 months

CMC Training Recommendations

In a survey of the CMCs responsible for implementing the CMC Program (81 of 94 responding), and interviews of 26 CMCs, we received numerous comments recommending improvements to CMC Program training. The most frequent CMC training recommendations were:

- > **Organize districts by size and situation for discussion.** Most CMCs recommended against a “one size fits all” training model. Where appropriate, lectures and discussion materials should consider the inherent differences in personnel and other resources available to small, medium, large, and extra-large USAOs.
- > **Address the relationship of the CMC Program to the ATTFs.** Several CMCs stated that ATTF coordinators and CMCs duties overlap, particularly in coordinating with state and local agencies. One interviewee suggested that CMC and ATTF coordinator training be designed so the groups can discuss areas of joint or overlapping responsibilities.
- > **Maximize small group discussion.** CMCs frequently stated that training should utilize a more interactive format featuring pragmatic advice and information sharing among USAOs, rather than being “a gathering of talking heads” as one CMC described the prior CMC Training Conferences.
- > **Conduct training on a regular basis.** CMCs stated that training in critical incident response should be conducted on a regular schedule (annual or bi-annual) and the training should be mandatory.

²⁸ The CMU conducts a wide range of exercises, some of which involve supporting local law enforcement agencies. Because some of these exercises do not involve violation of federal law, USAO involvement is not always appropriate.

covered by the SSA's records, the FBI CMU conducted exercises in less than 25 percent of the USAO districts. Therefore, most USAOs had no opportunity to participate in an FBI-sponsored exercise.

CTS also reported that USAOs participated in many exercises since 1997, including cyberterrorism exercises, a "full-field" weapons of mass destruction exercise, exercises in preparation for the 2002 Winter Olympics, and TOPOFF 2000 and TOPOFF 2002, which were large-scale exercises simulating coordinated terrorist attacks in multiple jurisdictions. Our survey regarding participation in exercises (see Appendix C) was specifically designed to capture data on USAO participation in all of the above exercises.

USAOs report they lack training and resources to conduct exercises. During our interviews of 26 CMCs, we asked why USAOs did not conduct more critical incident response exercises. They responded that the primary reasons for not conducting exercises were that they lacked information on how to conduct exercises (14 of 26) and that small districts lacked the resources to conduct an exercise. However, we found that some CMCs took creative steps to identify and use local resources to conduct exercises. For example, one CMC in a medium size USAO in the Midwestern United States told us that she is developing a tabletop exercise, complete with video, with the assistance of a professor at a top research university. The CMC told us that she serves on a curriculum advisory committee for a graduate program in homeland security that the same professor is developing. Such efforts enhanced the USAO's response capabilities by enabling it to draw on previously untapped resources.

CTS and EOUSA Failed to Fulfill Their Administrative and Support Responsibilities for the CMC Program.

We found that CTS and EOUSA did not effectively support the CMC Program because they did not provide effective training, did not provide adequate guidance, did not accurately track and maintain the submitted Plans, did not review the submitted Plans, and did not evaluate the USAOs' implementation of the CMC Program.

CTS and EOUSA did not provide effective training. Since the inception of the CMC Program in May 1996, CTS sponsored only two CMC Training Conferences and one two-hour videoconference. The first training conference took place in Arlington, Virginia, from June 17 through 20, 1997. The second conference took place in Columbia, South Carolina, from October 19 through 22, 1999. No additional CMC-specific training was provided until March 2003, when CTS sponsored a two-hour videoconference for CMCs. The Deputy Chief, CTS, confirmed that CTS neither developed nor sponsored any other training for CMCs.

Limited CMC Training. When we questioned the lack of CMC-specific training over the previous four years, CTS told us that national CMC training had been planned for Fall 2001 or Spring 2002. According to CTS, this training was initially deferred after the events of September 11, 2001, to accommodate other required training, and then deferred further because many of those who would have been the trainers or trainees were involved in the nationwide investigation of the terrorist attacks. In August 2003, in response to a draft of this report, CTS told us that additional preparedness and response training was scheduled for March 2004.

We assessed the training agendas of the 1997 and 1999 CMC training conferences and viewed a videotape of the 2003 videoconference. We found that CMCs received little specific instruction on how to develop Plans and conduct critical incident exercises. According to the 1997 CMC Training Conference agenda, during the three-day conference the CMCs received three hours of instruction on developing crisis response plans and spent three hours in a group assignment on planning exercises. Similarly, during the 1999 CMC Training Conference CMCs participated in a two and one-half hour session covering "Development and Testing of a District Plan and Intra-district Coordination of Planning Efforts." The most attention given to either topic related to conducting exercises occurred at the 1999 conference. Participants spent four hours in a general session discussing two possible terrorist attack scenarios, after which they met in small groups to discuss one of the scenarios for 90 minutes. The session concluded with a 45-minute review for all participants.

In addition to reviewing the 1997 and 1999 Conference agendas, we discussed training during our interviews with CMCs across the country. All but one of the 26 CMCs we interviewed indicated that the prior training was inadequate and that they needed additional training. Further, the CMCs stated that the training should be revised to include changes that have occurred since the last CMC Training Conference in 1999. The changes include the post September 11, 2001, reorganization of the Department to focus on counterterrorism; the passage of the USA PATRIOT Act and other terrorism-related legislation; the reorganization of the Criminal Division; the issuance of the National Strategy for Homeland Security; the formation of the Department of Homeland Security; and the creation of the ATTFs within USAOs. While these topics were addressed in the ATTF training conducted since September 2001, we found that few CMCs have attended that training.

Regarding the lack of CMC Program training, CTS confirmed that it did not conduct more CMC-specific training after 1999. CTS also stated that it has no line authority over the USAOs and, thus, can provide guidance but not dictate what the USAOs do. CTS told us that with the Department's increased focus on prevention, it is working to see that fewer incidents occur and that

there is less need for response activity. CTS stated that it is addressing preparedness through such activities such as increased planning and cooperative action between FBI Strategic Information Operations Center and CTS, the establishment of a national process tracking system, and a CTS website being piloted to 18 USAOs.

Other Training Fails to Fully Address Critical Incident Response Planning. During our review, the CTS Chief told us that ATTF training focused on both prevention *and* crisis response. He further stated that the training conducted for ATTF Coordinators covered much of the information needed by CMCs. CTS cited several examples of training that they believed met the needs of the CMCs, including:

- Between April 2002 and November 2002, approximately 1,600 prosecutors and law enforcement officers were trained at seven regional and national anti-terrorism conferences. One of the sessions at the November 2001 ATTF conference in Washington, D.C. addressed crisis management and was led by an experienced CMC.
- In January 2002, in order to comply with a directive issued by the Attorney General at the November 2001 conference, EOUSA broadcast a live, four-day teleconference to an estimated 25,000 viewers.
- In January 2003, 72 U.S. Attorneys were trained at an anti-terrorism conference.
- Between May and September 2003 (after fieldwork on our review was complete), approximately 330 prosecutors and 500 FBI supervisors received updated training at six national security conferences, each of which included a tabletop crisis response exercise.

Because the CTS Chief stated that ATTF training addressed CMC needs, we reviewed the training materials from the two national ATTF training conferences and the six regional training conferences. We found that the ATTF training focused on intelligence gathering and information sharing to prevent terrorist attacks. The training neither addressed preparing to respond to an attack or other critical incidents, nor developing and exercising a critical incident response plan.²⁹ While we found the first ATTF conference included a session on crisis response, we also found that crisis response information was not covered at the following six regional training conferences, nor the second

²⁹ The single reference to the CMC Program that we found was a list of CMC telephone numbers dated January 22, 2002. The only region to address the need for preparing for critical incidents was the Northeastern Region.

National Conference. Further, 10 of the 26 CMCs we interviewed also hold the ATTF Coordinator position for their USAO. In the last 2 years, these 10 CMCs attended the 2 ATTF national conferences and a regional training conference. Without exception, the CMCs told us they believe that the ATTF training was not a substitute for additional CMC-specific training.

Although CTS provided information that showed USAO staff members have attended numerous training events related to the ATTF initiative, our review found that this training did not replace or diminish the need for CMC training. Our review of the training agendas and curricula found that most of the training focused on the primary ATTF goals of identifying and preventing terrorist attacks, not on responding when attacks occur. In addition, while some of the training did address preparing to respond to attacks, our review of the attendee lists found that few CMCs attended that training. For example, no CMCs attended the January 2003 U.S. Attorney Anti-Terrorism Conference, and only 52 of the CMCs attended one of the six national security conferences conducted between May and September 2003. Further, ATTF training that did address response capabilities focused on responding to the threat of terrorism, not on responding to other critical incidents. The inadequacy of the ATTF training as a substitute for CMC training was confirmed in our interviews with 26 CMCs, as most (24 of the 26) identified the lack of training as the major hurdle they faced in improving the readiness of their offices to respond to a critical incident.

In addition to the ATTF training, CTS stated that many USAOs had been involved in “real-life” events such as responding to the September 11, 2001, terrorist attacks, and subsequent terrorism investigations, and suggested that those responses served as training. The actions of USAOs in responding to critical incidents could result in improvements to preparedness for later events if they were followed by after-action reviews, identification of weaknesses, and improvements to the process. However, we found that was not occurring. In May 2003, we contacted the 81 USAOs that responded to our initial survey to determine if they had made any substantive changes to their Plans.³⁰ The responses we received from 53 USAOs indicated that only 8 had ever updated their Plans. While responding to “real-life” events does provide experience, the failure to fully exploit that experience by identifying shortcomings and improving response Plans leaves the USAOs at risk of repeating mistakes during future incidents.

Based on our review of the CMC training materials, our evaluation of the Plans submitted, our interviews with CMCs, and our determination that the

³⁰ We defined “substantive” as changes in policy, scope, or procedures, as opposed to “administrative only” changes, such as updating telephone contact lists.

ATTF training did not provide a substitute for the CMC training, we concluded that the training provided to CMCs has not sufficiently prepared them to develop and exercise critical incident response plans. The inadequate CMC training contributed to the poor quality of the Plans submitted by the USAOs.³¹ The uniform poor quality of the Plans and CMC feedback strongly suggest that the CMCs need additional training to provide them with the guidance that will enable them to prepare complete crisis response Plans, as well as to implement effective exercises to test the Plans.

CTS and EOUSA provided minimal guidance to the CMC Program.

From 1996 until May 2003, CTS and EOUSA guidance to CMCs consisted of providing CMCs with the CMC Manual at the 1997 and 1999 conferences, and a “Sample Plan” sent to them in October 1999. This paucity of guidance was confirmed by the responses of all CMCs we interviewed. Significantly, most CMCs appointed since 1999 said that they were either unaware of the CMC Manual or unaware that it was available through *USABook Online*, the internal Department of Justice website for USAOs. Also, as with training, we found that the CMC Manual has not been updated since October 1999, and therefore does not reflect the critical changes in departmental and national policy since September 2001.

Further, we found that CTS and EOUSA did not work together to develop appropriate guidance for the CMC Program. For example, without notifying CTS, in October 1999 EOUSA distributed a five-page Sample Crisis Response Plan (Sample Plan) to CMCs. The Assistant Director for the EOUSA Security Programs Staff (SPS) told us that EOUSA distributed the Sample Plan after noting a serious inconsistency in format of the initial plans submitted by USAOs. According to EOUSA, the Sample Plan was never intended to be a comprehensive template, but was intended as a resource for CMCs to use in preparing district-specific Plans.

We reviewed the Sample Plan and confirmed that it is primarily a format guide. It does not provide complete guidance for USAOs. As a format guide, the Sample Plan was not designed to be scalable to meet the varying size, location, and vulnerabilities of all USAOs. Further, the Sample Plan gives examples, but does not mention many of the 48 actions recommended in the CMC Manual, such as coordinating with the FBI, ensuring the availability of specialized resources, and cooperating with state and local agencies.

³¹ As discussed earlier in this report, our review of the 76 Plans available at CTS and EOUSA found 62 do not address most of the 48 actions deemed essential to a critical incident response by CTS, and our survey of CMCs found that since the Program’s inception in 1996, 60 percent of USAOs have never conducted an exercise.

The Deputy Chief, CTS, told us that, after CTS learned of the EOUSA Sample Plan, it did not support its distribution. According to the Deputy Chief, each USAO has unique requirements and CTS was concerned that some USAOs would merely adopt the Sample Plan without modification.³² However, she stated, at that time CTS did not have the resources to develop a sample plan that would address all the varying needs of the USAOs. When we asked her if CTS had contacted either EOUSA or any USAO to communicate this concern, she told us that it had not.

In May 2003, near the end of our review, CTS issued a “Guide to Developing a Crisis Response Plan.” CTS requested that the CMCs review and revise their Plans using the Guide as a baseline.³³ The USAOs were instructed to submit their revised Plans to their Regional ATTF Coordinators and the ATTF Coordinator at EOUSA. As of August 2003, USAOs reported that they were in the process of revising their Plans.

CMCs cite need for additional guidance. The CMCs we interviewed identified several areas of needed guidance. For example, half of the CMCs (including CMCs that were also ATTF Coordinators) cited the lack of a forum to improve communication of CMC Program information. CMCs told us that they would benefit from a web-based system that would allow them to share information such as:

- key resource documents for the CMC Program,
- preliminary guidance for newly appointed CMCs,
- critical incident response planning procedures from USAOs organized by size and region,
- expert guidance on conducting tabletop exercises based on realistic scenarios of all magnitudes, not just international terrorist incidents,
- best practices and innovative approaches, and

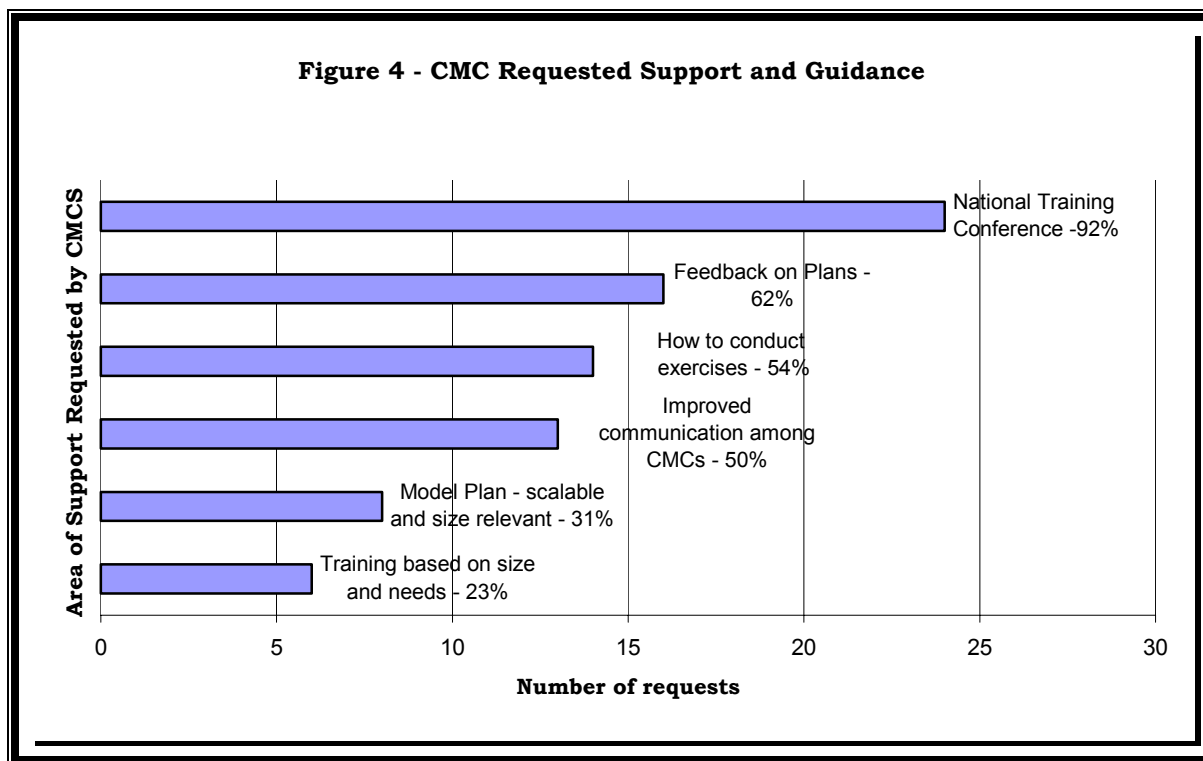
³² Our review of the 76 Plans on file with CTS and EOUSA, as well as our interviews with CMCs substantiated CTS’s concern. Our review of the Plans showed that at least 11 USAOs simply put their district’s name on the plan, added a phone list, and submitted it back to EOUSA.

³³ Attachments to this Guide included a re-release of several outdated documents, some from as far back as 1994. Included was an unrevised copy of Chapter 2 of the CMC Manual, “Practical Tips.” CTS did not revise the “Critical Incident Checklist for the Initial 48-Hours” to reflect legislative and policy changes that have taken place since September 11, 2001.

- bulletins notifying CMCs of developments affecting the CMC Program, such as the Department of Homeland Security Presidential Directive.³⁴

The CMCs also requested guidance on the relationship between the CMC Program and the Department's counterterrorism mission, additional training reflecting the changes in law and policy regarding critical incident response since 1999, individualized feedback on submitted Plans, and information on conducting exercises tailored to the size of the district (Figure 4).

During our exit conference with CTS in which we discussed the findings of this review, CTS told us that it is developing a website intended to address these issues, among others. As of September 12, 2003, the website was being pilot-tested at 18 USAOs. According to CTS, full access is planned for all USAOs by the end of October 2003.



Source: OIG CMC Interviews.

³⁴ While we acknowledge the CMC's comments that the lack of a forum makes it more difficult for them to share information, we noted that it has not prevented all CMCs from sharing information. In fact, more than 25 percent of the CMCs we interviewed told us that they used personal contacts to obtain information from other USAOs to assist in writing their Plans.

CTS and EOUSA failed to accurately track and maintain the Plans submitted by USAOs, resulting in lost Plans. We found that both CTS's and EOUSA's tracking and maintenance of submitted Plans were disorganized and inadequate. Neither organization was able to accurately identify which USAOs had submitted a Plan, nor were they able to ensure that the Plans on file were current.

We found that the problems with CTS and EOUSA's management of submitted Plans began at receipt. Neither CTS nor EOUSA date stamped the Plans upon receipt. Our review of the 76 Plans submitted found almost 40 percent had no publication or submission date. As a result, it was not possible to determine from CTS's and EOUSA's records if those Plans were the current versions in use at the USAOs. When we asked the Security Programs Staff (SPS) Assistant Director about the lack of date stamping, he confirmed that they had no mechanism for tracking Plans, other than a checklist containing a listing of the USAOs and corresponding boxes that were checked to indicate an office had submitted a Plan.

We found that CTS and EOUSA have no system for ensuring that they both have the same Plans in their inventory. The Deputy Chief, CTS, confirmed continuing disparity in the inventories. According to the Deputy Chief, after the second CMC conference, CTS started to inventory and review the Plans and found that it did not have the number of Plans that EOUSA said that it had. She indicated that CTS has since tried to obtain the missing Plans, but has been unsuccessful. We asked EOUSA why it did not provide the Plans to CTS, and EOUSA indicated that it was not aware of any outstanding CTS requests.

As a result, different offices reported different counts of submitted plans. According to EOUSA, 88 Plans have been submitted since 1996. However, a list provided by CTS indicated that 81 USAOs submitted Plans. Moreover, in the FY 2001 Performance Report, the Department reported that 88 of the 94 USAO Districts had submitted Plans by the end of FY 2001.³⁵ To establish an accurate count, we conducted a physical inventory of all of the Plans available at CTS and EOUSA and determined that only 76 Plans were on file.³⁶

³⁵ Department of Justice, FY 2001 Performance Report & DOJ FY 2002 Revised Final, FY 2003 Performance Plan, page 223. The Justice Management Division collected the data used in the report.

³⁶ In August 2003, in response to a draft of this report, CTS reiterated that it had 81 Plans on file and provided a list of the Plans. We reviewed the list and found it omitted the Northern Mariana Islands federal judicial district, but did list four Plans that were not among the Plans initially made available to us. When we asked to review the four plans, CTS could not find two and had the USAOs provide copies by facsimile. The Principle Deputy Chief, CTS, speculated that the four Plans may have been out of the files during our review because CTS

The discrepancy between the reported number of submitted Plans and the number we found on file apparently occurred because six USAOs attempted to submit their Plans but the Plans were lost, and six other USAOs were counted as having submitted Plans in error. Specifically, in response to our request for further information on the Plans that had been submitted, the SPS Assistant Director provided 88 USAO responses to an October 2001 e-mail in which the USAOs were requested to review their Plans, ensure that the Plans were current and complete, and confirm completion of the review by e-mail.³⁷ Among the 88 responses were 12 e-mails from USAOs that our review found had no Plans on file. Six of the e-mails indicated that an electronic copy of the USAOs' Plans had been included as an attachment, and the other six e-mails indicated that the USAO had reviewed the Plans as requested, but did not indicate that a copy was attached. When we asked the SPS Assistant Director if he or his staff had printed the six attached Plans, he told us that the electronic copies, including all attachments, had been deleted. Nonetheless, based on the receipt of 88 e-mail responses, the SPS Assistant Director reported that 88 USAOs had submitted their Plans.

CTS did not review timely submitted Plans or provide feedback to USAOs. Although most USAOs submitted their Plans to CTS and EOUSA as required, CTS did not review timely or adequately submitted Plans and failed to act when its review showed that the Plans were severely deficient in content and quality.³⁸ CTS did not review the Plans as it received them, and some Plans remained on file for as long as five years before CTS began its review. CTS never provided feedback to each USAO on its individual plan and, as a result, USAOs continued to rely on Plans that substantially failed to address the fundamental actions necessary to respond effectively to a critical incident. Our interviews showed that the CMCs wanted feedback on the Plans. All but one of the 26 CMCs we interviewed indicated that they were unsure of the quality of their Plans and strongly desired feedback regarding Plan quality and content. After additional training, feedback on the Plans was the most frequently requested support identified by CMCs.

staff may have been working with them, but she could not be sure because the individual responsible for maintaining the files was on detail in another city.

³⁷ EOUSA Memorandum to All USAOs, "Review of Crisis Response and Disaster Recovery Plans," October 15, 2001.

³⁸ After the completion of our fieldwork, CTS provided the inspection team with the name of a former staff attorney who said he reviewed all of the Plans that were submitted as of the end of September 1999. When interviewed, he told us that he did not recall the exact number of Plans reviewed nor did he write up individual Plan reviews, but his overall assessment was that the Plans were not detailed and were generally of poor quality. He also told us that he informed the CTS Deputy Chief of his findings.

The CTS Deputy Chief told us that the reason CTS did not complete the reviews or provide feedback to the USAOs was that CTS did not have the resources to conduct individualized Plan reviews. Therefore, CTS opted instead to develop its own model plan.³⁹ Beginning in early to mid-2001, nearly five years after CTS began receiving Plans, four CTS attorneys began reviewing the Plans on file in order to draft a model plan to guide USAOs in revising their Plans. Each attorney reviewed approximately 10 plans in conjunction with their work on drafting the model plan. Approximately 5 to 10 plans were identified as having “best practices” or provisions worthy of inclusion in a revised model plan that would address content, not just format. However, CTS’s initial review also revealed serious shortcomings in the submitted Plans. Nonetheless, there was an additional two-year delay before CTS issued its Guide to Developing a Crisis Response Plan in May 2003.⁴⁰ In August 2003, USAOs reported that they were in the process of revising their Plans.

**CMC Feedback -
Need for CTS review of Plans**

“Feedback would be helpful, any kind of feedback... observations, insights... I would love to see some feedback – model plans, best practices, any type of information to make the plans more effective... We are not doing this for bureaucratic reasons.”

- CMC from a large-size USAO in the southern United States

EOUSA neglected to examine CMC Program implementation during evaluations of USAO operations. We found that EOUSA only recently included a minimal examination of the USAOs’ implementation of the CMC Program in the triennial operations reviews conducted on each USAO. During the triennial operations reviews, EOUSA’s Evaluation and Review Staff (EARS) evaluates “the performance of the Offices of the United States Attorneys, making appropriate reports and taking corrective action where necessary.”⁴¹ When we initially interviewed the EARS Assistant Director, he told us that the CMC Program was not part of EOUSA’s triennial operations reviews of USAOs. In a subsequent interview, he informed us that, in October 2002, two questions regarding the CMC Program were added to a Security Evaluator’s Checklist completed by evaluators during the reviews. The questions added to the checklist were:

³⁹ As discussed on page 23 of this report, in May 2003, CTS sent all CMCs a “Guide to Developing a Crisis Response Plan.”

⁴⁰ As noted earlier in this report, after the completion of our fieldwork, CTS provided the inspection team with the name of a former staff attorney who reviewed all of the Plans that were submitted as of the end of September 1999. When interviewed, he told us that he did not recall the exact number of Plans reviewed nor did he write up individual Plan reviews, but his overall assessment was that the Plans were not detailed and were generally of poor quality. He also told us that he informed the CTS Deputy Chief of his findings.

⁴¹ EOUSA website, <http://www.usdoj.gov/usao/eousa/mission.html#backtotop>, April 9, 2003.

-
- Has the Crisis Response Coordinator developed the Crisis Response Plan and provided a copy to the Security Program Staff?
 - Has the Crisis Response Plan been reviewed by the District Office Security Manager and signed by the U.S. Attorney?

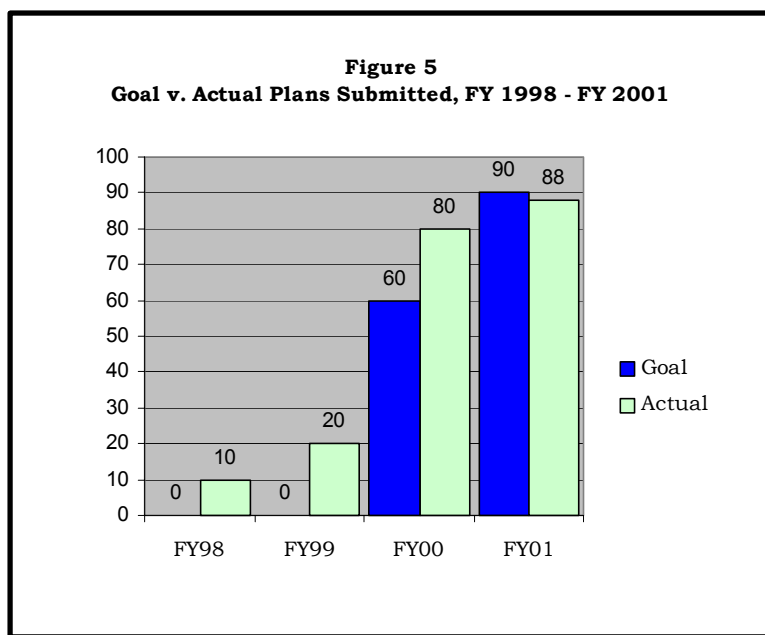
We asked the EARS Assistant Director why the CMC Program was not reviewed in more depth during the triennial operations reviews. He stated that EARS currently lacks the resources to evaluate the CMC Program in greater detail. When we posed the same question to the SPS Assistant Director, he asserted that the Plans are prosecutorial plans, not security plans. He stated that the Plans are not within the purview of the SPS to review, but are more appropriate to be reviewed by CTS. Further, he pointed out that the individuals reviewing the security operations are generally security personnel, who may not have extensive legal training, and therefore would not be appropriate to evaluate a prosecutorial plan. We asked the SPS Assistant Director if he had requested CTS's assistance in formulating appropriate evaluation questions for the CMC Program. He stated that he had not, and assumed that if CTS wanted the CMC Program evaluated, it would contact EARS directly.

We reviewed the reports from 18 EARS reviews conducted since those questions were added. We found the questions were checked off without any additional information provided. Moreover, the limited information contained in the reports was inconsistent with what we found when we reviewed the Plans available at CTS and EOUSA. Four of the 18 triennial operations reviews were conducted at USAOs that we found had no Plans on file with CTS or EOUSA, but the reports indicated that the USAOs had submitted Plans. In contrast, one report on a USAO that we confirmed had submitted a Plan indicated the opposite.

The Department Overstated the CMC Program Implementation in Its Annual Performance Reports.

We found significant discrepancies between the reported performance of the CMC Program in the Department's Annual Performance Reports and the actual performance of the USAOs, CTS, and EOUSA in implementing the CMC Program.⁴² While the performance measure was the number of USAOs with Plans, the supporting narrative indicated that all of the Plans (88) had been submitted and reviewed by CTS. The narrative also stated that the Plans met certain minimum content standards and provided a crosswalk with FBI and local and regional crisis response plans. However, we found that the number, the process, and the content of the Plans were all reported incorrectly. As a result, the intent of the performance measure – to ensure that the Department was fully prepared to respond to critical incidents – was not clearly met.

In its FY 2000 Performance Plan, as a part of its strategic objective to “Improve Response Capabilities to Terrorists’ Acts,” the Department established a goal of having Plans in place at 90 of the 94 USAOs by the end of FY 2002.⁴³ In FY 2001, JMD reported that 88 USAOs had completed their Plans based on the USAOs’ responses to an e-mail survey conducted by EOUSA (Figure 5). The Department declared the performance measure “met,” and eliminated the performance measure from future Annual Performance Reports.⁴⁴



Source: OIG administered survey of CMCs

⁴² Each fiscal year, the Department develops a Performance Plan that describes how it will achieve the objectives of its overall Strategic Plan. The following fiscal year, the Department issues a Performance Report that details its progress at achieving those objectives.

⁴³ Department of Justice, FY 2000 Performance Report & FY 2001 Performance Plan, April 2001, page 29.

⁴⁴ Department of Justice, FY 2001 Summary Performance Report, page 223, Appendix A – Discontinued Measures Performance Report.

In addition to reporting the number of Plans submitted, several Performance Reports also contained a narrative that described the content of the Plans, and the support that CTS and EOUSA had provided to the CMC Program.⁴⁵ That narrative stated that: 1) CTS had reviewed the Plans submitted by the USAOs, 2) the Plans provided specific information to guide the response to a terrorist attack, and 3) the Department was providing continuing support to the CMC Program.

Our review did not corroborate the reported level of performance and the claims of continued CMC Program guidance and administration. For example, the FY 2000 Performance Plan stated:

These plans articulate the steps each office would take in the event of a terrorist act or other critical incident in their jurisdiction. Critical aspects of each plan include a listing of essential points of contact with state and local authorities, including first responders and other emergency personnel; identification of potential infrastructure targets, in both the public and private sector; and coordination with the local the FBI field office and other law enforcement entities.⁴⁶

- *Our review found that the vast majority of the Plans submitted did not “articulate the steps each office would take in the event of a terrorist act or other critical incident in their jurisdiction.” Neither did they “establish a framework to enable each U.S. Attorney’s Office to address and plan for the steps to be taken in the event of a terrorist or other critical threat or act in their jurisdiction.” Moreover, not one plan identified potential infrastructure targets.*

Data Validation and Verification: The plans are evaluated to determine if they meet the criteria of a complete plan. This criteria [sic] the Attorney General includes, but is not limited to whether resource support elements such as other

⁴⁵ Department of Justice, FY 2001 Summary Performance Report, February 2000; Department of Justice, Department of Justice, FY 2000 Performance Report & FY 2001 Performance Plan, April 2001; Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final/FY 2004 Performance Plan, February 2003.

⁴⁶ Strategic Objective 1.4 Terrorism, Deter and detect terrorist incidents by developing maximum intelligence and investigative capability. FY 2000 Performance Report and FY 2002 Performance Plan – April 2001 (pages 34 and 35).

government agencies (FEMA, National Guard, etc.) are identified.⁴⁷

- *Our review found that CTS did not review the Plans as they were submitted, and did not begin a systematic review until 2001. Although that review disclosed the poor quality of the Plans, CTS never provided feedback to the USAOs to inform them that the Plans substantially failed to address the 48 actions that should be taken when responding to a critical incident.*

Strategies and Initiatives to Achieve the FY 2002 Goal: Our strategy is to build maximum feasible capability in the counterterrorism program, allowing the Department to identify and address terrorist threats...It means that all elements of crisis and consequence management at the federal, state, and local levels throughout the country will have developed and implemented *integrated terrorism response plans* [emphasis added].

- *Despite the declaration of the Criminal Division in the FY 2000 Performance Report and FY 2002 Performance Plan that the performance measure for the number of submitted USAO Plans had been achieved, and the removal of plan submission from future performance plans, our review found that integrated terrorism incident response plans have not been developed and implemented.*

⁴⁷ Department of Justice, FY 2001 Performance Report/FY 2002 Revised Final, FY 2003 Performance Plan, Section 1.4B, Improve Response Capabilities to Terrorists' Acts, April 2001.

CONCLUSION AND RECOMMENDATIONS

We concluded that the Department has not effectively implemented the CMC Program to ensure that the USAOs are ready to quickly and appropriately respond to critical incidents. Both the National Strategy for Homeland Security and the Department's Anti-Terrorism Plan establish responding effectively to such incidents as one of three main strategic objectives for the Department. The CMC Program, which began in 1996, remains the core activity of the USAOs response planning effort.

Although CTS provided the USAOs with guidance that identified 48 fundamental actions needed to plan their response to a critical incident in 1999, most critical incident response plans prepared by the USAOs failed to reflect that guidance. Of the 76 Plans that we reviewed, only 12 Plans addressed half or more of the 48 fundamental actions. Further, the USAOs rarely conducted exercises to test their Plans and practice critical incident response procedures. These deficiencies occurred because the USAOs did not place a high priority on response planning.

We also found that CTS and EOUSA did not fulfill their responsibilities to administer and support the Program. After holding two national training conferences in 1997 and 1999, CTS and EOUSA provided no further CMC-specific training in critical incident response until March 2003. CTS reviewed only a few of the Plans prepared by USAOs, and did not act when that limited review found the Plans to be largely incomplete and inadequate. Further, EOUSA does not evaluate CMC Program implementation during its periodic operational reviews of each USAO. Finally, the Department's Annual Performance Reports substantially overstated the achievements of the CMC Program at improving the USAOs' and the Department's preparedness to respond to critical incidents.

In summary, since 1996, the USAOs, CTS, and EOUSA have failed to implement Plans to improve the preparedness of the USAOs to respond to critical incidents. The first priority of the Department and the National Strategy for Homeland Security is to prevent terrorism, but those initiatives also recognize that there is a commensurate need to be prepared to respond to incidents that cannot be prevented. As stated in the Department's FY 2003 and 2004 Performance Plan, "to effectively address international and domestic terrorism, DOJ must concentrate on both prevention and response."⁴⁸ The

⁴⁸ Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final Performance Plan/FY 2004 Performance Plan, page 1.

failure of the USAOs, CTS, and EOUSA to fully implement the CMC Program leaves the Department less prepared to respond effectively when critical incidents occur.

In March 2003, CTS recommended that the CMC Program be incorporated into the ATTF/ATAC initiative. The recommendation was approved October 17, 2003. Although placed under the ATACs, the CMCs “will remain responsible for the creation, implementation, maintenance and exercise of their district’s crisis response plan....”⁴⁹ However, the ATACs are only responsible for responding in the event of terrorist attacks, not other critical incidents. It is not clear whether the ATACs’ responsibilities will be expanded to include non-terrorist critical incidents, or whether the CMCs are still responsible for responding to non-terrorist critical incidents separately. Therefore, it is unclear how the realignment of the CMCs may affect the USAOs’ ability to respond to critical incidents, especially those that are not terrorist-related.

As this review showed, the need to prepare for all critical incidents has not been met. Therefore, we provide ten recommendations to improve the preparedness of the USAOs to respond to critical incidents.

We recommend that the Deputy Attorney General:

1. Ensure that performance measures are developed to assess the readiness of USAOs to respond to critical incidents.

We recommend that all United States Attorneys:

2. Revise the critical incident response plans to address the action items identified by CTS, and regularly update the plans to reflect changes in law, departmental policy, or local procedures.
3. Conduct and participate in periodic exercises to test the critical incident response plans and practice responding to critical incidents.
4. Establish workload reporting procedures that capture the time dedicated to critical incident response planning duties.

⁴⁹ Memorandum from Guy Lewis, Director, EOUSA, to All United States Attorneys, “Merger and Realignment of Crisis Management Coordinators Program Under Anti-Terrorism Advisory Council,” October 17, 2003.

We recommend that the Assistant Attorney General, Criminal Division:

5. Provide updated training and guidance to USAOs on how to prepare effective and comprehensive critical incident response plans. The guidance should reflect changes in legislation, policy, and critical incident response practice that have taken place since September 11, 2001.
6. Review all USAOs' Plans, including revisions, to ensure that the Plans cover all critical areas; provide individualized feedback to USAOs; and periodically report to the Deputy Attorney General on the status of the USAOs' Plans.
7. Provide USAOs with training and guidance on how to develop and conduct appropriate critical incident response exercises, either independently or in conjunction with the FBI or other offices.
8. In conjunction with EOUSA, complete the development of a critical incident response website with information on critical incident response, including lessons learned, exercise scenarios, and best practices.

We recommend that the Director, EOUSA:

9. Establish a system for accurately tracking and reporting the status of USAO submissions and updates to critical incident response plans.
10. With advice from CTS, revise the operations review process to include a full evaluation of the preparedness of USAOs to respond to critical incidents.

APPENDIX A - Critical Incident Response Plan Content Analysis		Number and Percentage of Plans Failing to Address Action Items	
Action Item	CTS-Recommended Action Items (from 48-Hour Checklist)	Number of 76 Plans Failing to Address Item	Percentage of 76 Plans Failing to Address Item
1	Obtain the best information available on the incident	30	39%
2	Determine FBI plans for establishing a command post	24	32%
3	Advise EOUSA and CTS per the DOJ Crisis Response Plan	21	28%
4	Establish clear communication channels with Headquarters	31	41%
5	Establish initial support needs and liaison with Criminal Division	57	74%
6	Deploy AUSAs consistent with incident magnitude	12	16%
7	Ensure that deployed AUSAs know their role and interrelationships	16	21%
8	Plan for overlapping relief shifts for AUSAs to ensure coverage and smooth transitions	32	42%
9	Designate a Senior AUSA to handle reassignment of crisis response AUSAs to include contact with court regarding postponing court calendar	45	59%
10	Ensure availability of victim/witness resources and service	21	26%
11	Ensure AUSAs have appropriate equipment (<u>e.g.</u> , cell phones, laptops, ACIRG Manual, electronic forms)	33	43%
12	Ensure availability of accommodations and transportation if event outside USAO area	52	67%
13	Identify information flow at command post	38	50%
14	Assign AUSAs at critical information flow points within the command post and the "SAC's Room"	53	70%
15	Ensure AUSAs know investigative developments in timely manner	51	67%
16	Designate AUSA(s) to review affidavits and applications for process to ensure advisability, accuracy, consistency	47	62%
17	Designate case agents	54	71%

APPENDIX A - Critical Incident Response Plan Content Analysis		Number and Percentage of Plans Failing to Address Action Items	
Action Item	CTS-Recommended Action Items (from 48-Hour Checklist)	Number of 76 Plans Failing to Address Item	Percentage of 76 Plans Failing to Address Item
18	Review law enforcement coordination between federal agencies, and state and local authorities	38	50%
19	Ensure FBI/HQ does not initiate investigative action in other field offices without coordinating with command post	56	72%
20	Have FBI/HQ take affirmative steps to ensure that other FBI offices do not self-initiate investigative activity without coordination	57	74%
21	Ensure with SAC/On-Scene Commander that the following are used ONLY with coordination with USAO (e.g., composites, informal immunity, photo identification, search warrants)	54	70%
22	Review media procedures with SAC/On-Scene Commander (e.g., coordinating public statements with USAO, monitor pretrial publicity for litigation issues)	31	39%
23	Ensure interviews are coordinated to avoid multiple agency interviews	67	87%
24	Ensure consistent procedure in conducting/documenting interviews (e.g., one write-up, consistent format across agencies)	67	87%
25	Preserve crime scene consistent with life-saving requirements	54	70%
26	Ensure single, coordinated crime scene protocol	60	79%
27	Ensure orderly presentation of evidence at trial through limited witnesses (e.g., search team leaders)	63	82%
28	Establish single, unified evidence room and communicate chain of custody procedures	61	80%
29	General coordination with EOUSA and CTS to ensure USAOs receive instructions on how to proceed	62	80%
30	Coordinate on issuing grand jury subpoenas	63	82%
31	Coordinate applications for process, search warrants, arrest warrants, pen registers	60	78%
32	Coordinate on using photo spreads, lineups, hypnosis, polygraphs, informal immunities	64	83%
33	Coordinate on issuing public statements	49	64%
34	Check availability of grand jury	62	80%

APPENDIX A - Critical Incident Response Plan Content Analysis		Number and Percentage of Plans Failing to Address Action Items	
Action Item	CTS-Recommended Action Items (from 48-Hour Checklist)	Number of 76 Plans Failing to Address Item	Percentage of 76 Plans Failing to Address Item
35	Assess remaining life of grand jury/juries	62	80%
36	Coordinate with court concerning special grand jury sections	62	80%
37	Assess need for voir dire of grand jurors if they are within scope of potential victims	59	76%
38	Assign paralegal or clerk to log subpoenas provided to law enforcement and to maintain record of disposition	65	84%
39	If out of district prosecutors involved, obtain necessary grand jury authorizations for official appearances before grand jury and ensure same filed with clerk	67	87%
40	Check availability of resources/personnel - Rapid Start	66	86%
41	Check availability of resources/personnel with forensic expertise	61	79%
42	Check availability of resources/personnel for sketch artist	66	86%
43	Check availability of resources/personnel – photographer	66	86%
44	Special Projects Unit to ensure timely initial measurements for potential mock-ups at trial	66	86%
45	Coordinate concerning availability of grand jury	63	82%
46	Coordinate procedure for around the clock availability of judges for issuance of process	56	72%
47	Develop a regional crisis management plan	60	78%
48	List of contacts at every relevant federal, state, and local agency which may be called on to participate	34	45%

APPENDIX B

CONTENT OF CMC TRAINING CONFERENCES

CMC Training Conferences

The first of two Crisis Management Coordinators' Conferences (CMC Conference) took place on June 17-20, 1997, in Arlington, Virginia. CTS trial attorneys, in conjunction with AUSAs assigned temporarily to the EOUSA Office of Legal Education (OLE), planned and conducted the training.

The second CMC Conference took place on October 19-22, 1999, at the National Advocacy Center (NAC) in Columbia, South Carolina.⁵⁰ Presenters included officials from CTS, the FBI Crisis Management Unit, EOUSA, USAOs, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), FBI, Federal Emergency Management Agency (FEMA), and the Departments of Defense, Energy, and Health and Human Services.

1997 CMC Conference:

Presenters included officials from CTS, EOUSA, USAOs, the FBI, the Office for Victims of Crime, FEMA, and the ATF who addressed CMCs on critical incident response. Topics covered in the training included:

- coordinating with and supporting the FBI command post,
- participating in regional FBI crisis response training,
- recognizing the relationship between intelligence, investigations, and criminal prosecutions,
- coordinating with law enforcement and emergency response agencies,
- understanding laws combating terrorism,
- servicing victims and families of victims,
- dealing with the media,
- conducting tabletop exercises, and
- developing a plan.

⁵⁰ EOUSA operates the NAC, which trains federal, state, and local prosecutors and litigators in advocacy skills and management of legal operations.

1999 CMC Conference:

Information provided by OLE indicated that the 1999 CMC training conference covered:

- preventing terrorist acts as a departmental priority,
- preparing for potential chemical, nuclear, and biological incidents on a federal, state, and local level,
- upgrading crisis response capabilities,
- responding to victim and witness needs,
- developing and testing Plans, and
- coordinating intra-district crisis planning.

CMC Manual Topics

Organization of Federal Resources – Provides telephone list, list of spring 1999 Attorney Critical Incident Response Group (ACIRG) members, and ACIRG organizational overviews (including description of PDD 36 on “Lead Agency Authority”).

Practical Tips – Contains the Crisis Incident Checklist for Initial 48 Hours, information on preserving and cataloging evidence, assisting in trial preparation, and cooperating during multi-agency investigations.

Legal Reference – Contains information on and analysis of domestic terrorism offenses, jurisdictional issues, and statutes relevant to terrorism incidents.

Methods for Obtaining Existing Evidence – Contains a discussion of proper methods for search and seizure of physical evidence, including the proper execution of search and arrest warrants.

Methods for Developing Evidence – Contains information on proper identification of suspects, surveillance techniques, testimonial evidence, and witness issues.

Dealing with the Media and the Public – Contains information on releasing information to the media and the public (including coordination with the FBI), obtaining information from the media, and denying the public and the media access to sensitive information.

Special Issues – Contains information on using military resources and the use of deadly force.

Terrorism Involving Chemical, Biological, Radiological and Nuclear (CBRN) Weapons – Contains information on the federal response to a CBRN incident and specialized resources available.

APPENDIX C

CMC SURVEY INSTRUMENT

Crisis Management Coordinator Survey

Fill out contact information and check boxes below, unless otherwise noted.

Please return completed survey as an e-mail attachment to [usdoj.gov].

NOTE: Critical incidents include, but are not limited to, acts of terrorism, hostage/barricade situations, and acts of criminal civil disorder

Name/Title _____

District _____

1. Does your office have a Critical Incident Response Plan (CIRP) on file with the Executive Office for United States Attorneys?

☐ Yes ☐ No ☐ Don't Know/Not Applicable

2. How many times has your office **exercised** the CIRP in a **simulated** critical incident since 1996?

If your office did not exercise the CIRP, skip questions 2a and 2b and go to Question 3.

☐ 1 ☐ 2 ☐ 3 ☐ 4+ ☐ Don't Know/Not Applicable

- 2a. Were the exercises effective in preparing for critical incidents?

☐ Effective ☐ Neutral ☐ Not Effective ☐ Don't Know/Not Applicable

- 2b. Did your office update or revise the CIRP after the exercise?

☐ Yes ☐ No ☐ Don't Know/Not Applicable

3. How many times has your office experienced an **actual** critical incident since 1996?

☐ 1 ☐ 2 ☐ 3 ☐ 4+ ☐ Don't Know/Not Applicable

- 3a. How many times did you activate the CIRP in response to a critical incident?

☐ 1 ☐ 2 ☐ 3 ☐ 4+ ☐ Don't Know/Not Applicable

- 3b. How effective was the CIRP in responding to critical incidents?

☐ Effective ☐ Neutral ☐ Not Effective ☐ Don't Know/Not Applicable

- 3c. Did you update or revise the CIRP in response to actual critical incidents?

☐ Yes ☐ No ☐ Don't Know/Not Applicable

4. Does your office prepare post-exercise or post-critical incident reports?

☐ Yes ☐ No ☐ Don't Know/Not Applicable

5. If your office does prepare post-exercise or post-critical incident reports, where are they kept? _____

6. Please provide any comments, suggestions, and ideas on CIRPs that you may have.

*Please e-mail completed survey to U.S. Dept. of Justice, Office of the Inspector General,
Evaluation and Inspections Division. Attn: xxxxxxxxxxxxi@usdoj.gov*

APPENDIX D

CRITICAL INCIDENT CHRONOLOGY: 1988-2003

December 1988	<u>DOJ Crisis Management Plan</u> . Attorney General issued the DOJ Crisis Management Plan.
October 1989	<u>National Preparedness Programs</u> . Attorney General established the DOJ National Security Emergency Preparedness Program and the National Security Regional Emergency Preparedness Program.
August 1992	<u>Ruby Ridge</u> . On a remote ridge in northern Idaho, a week-long stand-off between Randy Weaver and federal agents ended in a shootout during which an FBI sniper shot and killed Weaver's wife and infant son. Subsequent government reports criticized the critical incident response capabilities of the USAO in handling the incident.
August 1992	<u>Hurricane Andrew</u> . On August 24, 1992, Dade County, Florida, experienced the third most powerful storm to hit the United States and the most costly natural disaster ever recorded. Property damage exceeded \$20 billion and left nearly 200,000 Floridians homeless. The disaster resulted in a severe and extended disruption of normal activities, including government services, in an area of approximately 100 square miles.
February 1993	<u>World Trade Center Bombing</u> . On February 26, 1993, an explosive device detonated on the second level of the World Trade Center parking basement. The blast produced a crater approximately 150 feet in diameter and five floors deep, killed six people, and injured more than one thousand. Four individuals were convicted of the bombing on March 4, 1994.
February - April 1993	<u>Branch Davidian Standoff</u> . A 51-day standoff at the Branch Davidians' Mt. Carmel compound near Waco, Texas, ended on April 19, 1993, when fire consumed the compound, killing the Branch Davidian leader, David Koresh, and most of his followers. Subsequent government reports recommended evaluating the adequacy of communications among the different elements in a crisis, particularly between the negotiating and tactical elements.
April 1994	<u>Critical Incident Response Group</u> . FBI established the Critical Incident Response Group (CIRG) to more effectively deal with hostage-taking and barricade situations.
April 1995	<u>Oklahoma City Bombing</u> . On April 19, 1995 a bomb exploded in front of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, destroying about one-third of the structure. The explosion killed 168 people. In June 1997, a jury convicted Timothy J. McVeigh on all counts connected with the bombing and sentenced him to death. McVeigh was executed on June 11, 2001.
June 1995	<u>Presidential Decision Directive 39</u> . Established critical incident response capabilities as a government-wide priority.
January 1996	<u>ACIRG</u> . Attorney General established Attorney Critical Incident Response Group to provide expert assistance to the Attorney General and USAOs in the event of a crisis.

March – June 1996	<u>Freemen Standoff</u> . The FBI attempted to arrest more than a dozen individuals wanted on charges that included circulating \$15 billion in bogus checks and threatening to kill a federal judge. The attempt resulted in an 81-day long armed standoff. On June 13, 16 members of the group surrendered, ending the longest federal siege in modern U.S. history. The incident culminated in the conviction of 21 defendants in 3 separate trials spanning 15 weeks.
May 1996	<u>Critical Incident Response Plan</u> . Attorney General established a Critical Incident Response Plan that required United States Attorneys to develop Critical Incident Response Plans to help ensure “quick and appropriate” response.
June 1997	<u>First CMC Conference</u> . Distribution of first edition of the Crisis Management Coordinator Manual developed by the Criminal Division.
May 1998	<u>Presidential Decision Directive 62</u> . “Protection Against Unconventional Threats to the Homeland and Americans Overseas.” Established the National Special Security Event (NSSE), which is an event of such national significance that it warrants the availability of the full protective and consequence management capabilities of the federal government. The three lead agencies for NSSEs are FBI, FEMA, and U.S. Secret Service.
July 1999	<u>USAO Critical Incident Response Plans</u> . Memorandum from Assistant Director, EOUSA, to all USAOs asking for submission of their critical incident response plans.
October 1999	<u>Second CMC Conference</u> .
September 2001	<u>September 11, 2001</u> . Terrorists hijacked four airplanes, three of which flew into the World Trade Center and the Pentagon. More than 3,000 people were killed in the attacks.
September 2001	<u>Anti-Terrorism Plan</u> . Attorney General issued the Department’s Anti-Terrorism Plan ordering every United States Attorney to implement the plan. The plan focused on prevention “by arresting and detaining violators...who participate in, or lend support to, terrorist activities [and] use every available law enforcement tool to incapacitate these individuals and their organizations.”
September 2001	<u>Anti-Terrorism Task Forces</u> . Attorney General established Anti-Terrorism Task Forces (ATTFs) in each USAO that will 1) serve as a conduit of information about suspected terrorists, 2) implement an operational plan for the prevention of terrorism, and 3) serve as a standing organizational structure for a coordinated response to a terrorist incident.
October 2001	<u>Guidance for ATTFs</u> . Deputy Attorney General issued a seven-page memorandum on “Guidance for Anti-Terrorism Task Forces.”
October 2001	<u>USAO Review of Plans</u> . Memorandum from Director, EOUSA, requesting that each USAO review its Critical Incident Response Plan to ensure that it is “current, complete, and known by persons...responsible for crisis response.”
October 2001	<u>USA PATRIOT Act</u> . Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) passed by Congress to “to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.”

October 2001	<u>Anthrax Attacks</u> . Anthrax-contaminated letters mailed to Washington, DC, and locations in New York and Florida.
October 2001	<u>CONPLAN issued</u> . United States Government Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN) developed through the offices of six primary departments and agencies with responsibilities as identified in Presidential Decision Directive 39 (PDD 39). It was designed to provide overall guidance to federal, state, and local agencies concerning how the federal government would respond to a potential or actual terrorist threat that occurs in the United States, particularly one involving weapons of mass destruction.
November 2001 - January 2003	<u>ATTF Training</u> . Two national 3-day training sessions and six regional 2-day training sessions held for Anti-Terrorism Coordinators.
November 2001	<u>DOJ Strategic Plan</u> . FY 2001–2006 Strategic Plan issued. USAO Critical Incident Response Plans are discussed as part of Goal One: Protect America Against the Threat of Terrorism.
November 2001	<u>Blueprint for Change</u> . Attorney General announced the “Blueprint for Change, A Plan to Reshape the Department and Its Components to Focus on Anti-Terrorism.”
July 2002	<u>National Strategy for Homeland Security</u> . President issued National Strategy for Homeland Security, which identified three strategic objectives: 1) prevent domestic terrorist attacks, 2) reduce vulnerability to terrorism, and 3) minimize damage and recover from attacks that occur.
November 2002	<u>Reorganization of the Criminal Division</u> . Attorney General divided the Terrorism and Violent Crime Section into the Counterterrorism Section and the Domestic Security Section. ⁵¹
February 2003	<u>Homeland Security Presidential Directive 5</u> . President outlined a policy to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies.
February 2003	<u>DOJ Performance Report</u> . Release of Department of Justice, FY 2002 Performance Report/FY 2003 Revised Final Performance Plan/FY 2004 Performance Plan, in which Attorney General states: “To effectively address international and domestic terrorism, DOJ must concentrate on both prevention and response.”
March 2003	<u>Department of Homeland Security established</u> .

⁵¹ The Counterterrorism Section is responsible for the design, implementation, and support of law enforcement efforts, legislative initiatives, policies, and strategies relating to international and domestic terrorism. The Domestic Security Section is responsible for prosecutions of border-related crimes such as alien smuggling and international arms trafficking.

APPENDIX E

CRIMINAL DIVISION'S AND EXECUTIVE OFFICE FOR THE UNITED STATES ATTORNEYS RESPONSE



U.S. Department of Justice

Criminal Division

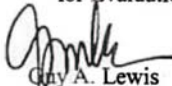
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Washington, D.C. 20530

November 10, 2003

MEMORANDUM

TO: Paul A. Price
Assistant Inspector General
for Evaluation and Inspections

FROM: 
Guy A. Lewis
Director
Executive Office for United States Attorneys

Christopher A. Wray 
Assistant Attorney General
Criminal Division

SUBJECT: Response to Draft Report Reviewing Critical Incident
Response Plans of United States Attorneys' Offices

I. General Comments

We have reviewed the draft report of the Office of Inspector General (OIG), entitled "Review of the Critical Incident Response Plans of the United States Attorneys' Offices," and submit comments herein as requested. We agree with the OIG's conclusion that the Criminal Division's Counterterrorism Section (CTS) and the Executive Office for United States Attorneys (EOUSA) could have focused more attention on certain aspects of the crisis response program, especially during the period between September 11, 2001 and the fall of 2002. To the extent further explained below, moreover, we concur with the draft report's recommendations and have already made considerable progress on a number of them.

We believe the report would be more accurate, however, if it more clearly reflected that the Department is more prepared today to respond to critical incidents than it has been in the past. Much of the report focuses on historical flaws in the process by which Critical Incident Response Plans were developed and assessed. While the report's discussion of these flaws contains useful lessons for the future, we are concerned that some readers of the report may misunderstand the scope and nature of our past and current crisis response efforts. We believe that the following three points deserve much greater recognition: 1) the existence and use of the Critical Response Plans is merely one factor to consider in assessing whether United States

Attorneys' Offices (USAOs) are adequately prepared to respond to critical incidents; 2) CTS, EOUSA, and USAOs have undertaken extensive and comprehensive joint efforts during the past two years to enhance the Department's overall ability to respond to critical incidents; and 3) the Department is currently making substantial progress toward successfully implementing most of the recommendations suggested in the draft report. We discuss these points below, along with comments on the report's final conclusion and the report's recommendations.¹

II. Specific Issues

A. The Existence and Use of the Critical Response Plans

In our view, the draft report does not place the existence and use of the Critical Response Plans in the appropriate context. We agree that aspects of the response plans could have been better handled by all entities involved. As the draft report points out, initial plans submitted by the USAOs could and should have been monitored, and USAOs should have been provided feedback about the content of those plans. However, the question of whether the Critical Incident Response Plans existed, or contained specific action items, is merely one area of inquiry pertinent to answering the broader question of whether USAOs are prepared to respond to critical incidents. We believe that it is absolutely crucial and appropriate for the report to more clearly reflect this point. For example, some of the recommended actions in the 48-item checklist, which is adopted in the draft report as the criteria against which to measure the plans, are so second nature to the experienced prosecutors drafting and/or implementing these plans that there would be no need to specifically list them. Although a USAO might not include these items in a written plan, it would nevertheless take many of those actions in response to a critical incident, as deemed appropriate. Moreover, the USAO may not have included other recommended items in the checklist, such as the preservation of the crime scene, because these items are primarily under the domain of the FBI or another law enforcement entity responsible for handling the crime scene. While the USAO would certainly support the FBI or other law enforcement entity in every way possible to assist in these efforts, it would not necessarily include them as part of its own plan. The fact that such steps are not included in a plan would not indicate that these steps were not significant or necessary. They simply do not need to be set forth in the USAO plan. Thus, we do not believe that inclusion of items on this checklist is the proper standard by which to determine whether USAOs around the country are prepared to respond to a crisis. We will continue to encourage USAOs to use CTS' "Guide to Developing a Crisis Response Plan," distributed by CTS and EOUSA in May of 2003, to assist them in developing and revising their plans.

¹ With respect to the table of contents, the third major subject matter heading in the table of contents should be changed to reflect that the "Department" and not "CTS" is responsible for submitting the annual performance report. Although the text of the draft report, at page 29, correctly reflects this fact, the heading in the table of contents does not.

B. CTS, EOUSA, and the USAOs Have Undertaken Extensive and Comprehensive Joint Efforts During the Past Two Years to Enhance the Department's Overall Ability to Respond to Critical Incidents

We regret that the draft report does not more thoroughly identify and recognize the fundamental ways in which the Department has refocused its efforts on the prevention of terrorist incidents since September 11, and the training conducted to prepare the Department for such events. The draft report does not clearly acknowledge the extensive and comprehensive joint efforts undertaken during the past two years to enhance the Department's overall ability to respond to critical incidents. The draft report notes that the Crisis Management Coordinators' (CMCs) program was "designed to improve the ability of the USAOs to accomplish their statutory responsibilities while responding quickly and appropriately to critical incidents" and "to improve USAOs' performance in legal and procedural crisis response...." (Draft report at 3). The draft report, however, does not adequately reflect the substantial changes that were made in CTS, EOUSA, and the USAOs in response to 9/11 to focus attention on critical response to terrorism incidents. For example, the Attorney General's revision of the Department's Strategic Plan, and the establishment of the Anti-Terrorism Task Forces (now Anti-Terrorism Advisory Council) and the Intelligence Research Specialists' Program significantly enhanced the Department's preparedness efforts.

The review also faults CTS and EOUSA for failing to provide appropriate training and guidance as to changes in law and departmental and national policy (Draft report at iii, 18, 22). We believe that the report should have clearly noted the considerable substantive legal training provided to United States Attorneys and Assistant United States Attorneys, many of whom were CMCs, on crisis response responsibilities in terrorism incidents. For example, the draft report does not reference the training that EOUSA co-sponsored with the Centers for Disease Control in April 2003 on responding to chemical or biological incidents, Department training for prosecutors and investigators on the USA PATRIOT Act, and other changes in law relative to intelligence and law enforcement techniques and information sharing, and a broad array of substantive training provided by EOUSA to USAOs and Department attorneys through EOUSA's Office of Legal Education and JTN broadcasts. This training specifically addressed crisis response in terrorism incidents and provided updated legal and procedural training to improve the ability of the USAOs to satisfy the full range of their statutory responsibilities in response to a crisis.

C. Progress Made Since The Late Fall of 2002

The draft report gives little weight to the numerous, varied, and significant actions undertaken by CTS, EOUSA, and USAOs since the late fall of 2002 that are entirely consistent with the report's recommendations. Although we agree that CTS and EOUSA could have done more to focus attention on certain aspects of the crisis response program, especially between September 11, 2001 and the fall of 2002, we have been working together since then to provide the necessary focus and training to improve the crisis response program. For example, in the late

fall of 2002, planning began for a January 2003 antiterrorism conference for United States Attorneys that was co-sponsored by CTS and EOUSA. A portion of that conference was devoted to a crisis response exercise. Moreover, as a result of the March 2003 CMC-specific video-conference and the May 2003 updated and specific guidance contained in the "Guide to Developing a Model Crisis Response Plan" provided to USAOs, numerous USAOs across the country are currently revising their plans in accordance with that guidance. In addition, CTS and EOUSA have scheduled crisis response training at the National Advocacy Center in March of 2004. Furthermore, CTS has reorganized its operations to include the formation of a Policy, Legislation and Planning group to provide renewed focus on crisis response issues and planning. EOUSA and CTS have taken steps to form a small working group with the Attorney General's Advisory Committee's participation to review revised crisis response plans and provide individualized feedback to all USAOs. Moreover, the Department, as of October 17, 2003, has provided a memorandum to all United States Attorneys requesting that the Crisis Management Program and the Antiterrorism Advisory Council (ATAC) Program in the USAOs be merged and/or realigned to allow the CMC to operate under the ATAC in each district and to work closely with the District Office Security Managers to coordinate efforts on crisis response planning. Inclusion of all of these activities and plans in the report would have demonstrated that crisis response efforts are currently being enhanced to respond to the areas for improvement identified in the OIG report.

D. The Report's Final Conclusion

Finally, we are concerned that the report's final conclusion concerning the Department's overall preparedness exceeds the scope of an inquiry that was limited to a review of critical incident response plans and does not properly credit all the steps taken by EOUSA, CTS, and the USAOs. This is particularly significant because the report, which will be published in November 2003, contains no statement concerning the time frame of the investigation, but includes the finding that the need to prepare for critical incidents has not been met. While we will continue to seek to improve preparedness, we believe that a complete review of past efforts, current work, and future plans demonstrates that the need to prepare is being properly addressed.

E. Recommendations

We address each of the recommendations below.

Recommendation 1:

We concur that performance measures should reflect that the USAOs have meaningful plans and periodically exercise and revise those plans. As reflected in the attached Action Plan for Crisis Management Response Planning, EOUSA will work with CTS in the development of performance measures to assess crisis response plans and exercise and revision of those plans, with a target completion date of June 30, 2004. The establishment of performance measures to evaluate overall readiness is a more complex matter and exceeds the scope of this review.

Recommendation 2:

We concur that critical incident response plans should be revised to conform to the May 2003 "Guide to Developing a Model Crisis Response Plan" drafted by CTS, endorsed by EOUSA, and distributed to all USAOs. As a result of the March 2003 CMC-specific video-conference and the May 2003 updated and specific guidance contained in the "Guide to Developing a Model Crisis Response Plan" provided to USAOs, numerous USAOs across the country are currently revising their plans in accordance with that guidance. As discussed above, EOUSA and CTS have taken steps to form a small working group with the Attorney General's Advisory Committee's participation to review revised crisis response plans and provide individualized feedback to all USAOs. In addition, CTS and EOUSA have scheduled crisis response training at the National Advocacy Center in March of 2004, which will include a table-top exercise designed to test the crisis response plans of every USAO.

Recommendation 3:

We concur that participation in periodic exercises to test critical incident response plans is advisable, but we do not agree that each office should be required to conduct its own exercises. For some offices, particularly smaller USAOs, this may be too much of a burden and diversion from other equally critical duties. CTS personnel are enhancing their expertise in the design of crisis response exercises so that they are better able to provide specific guidance to USAOs in this area. As EOUSA and CTS plan the March 2004 crisis response training at the NAC, they will also include this in the agenda for that conference.

Recommendation 4:

We concur with this recommendation. EOUSA is exploring appropriate means to implement this recommendation.

Recommendation 5:

We concur with this recommendation and note that efforts to implement it are ongoing. In May of 2003, we provided a "Guide to Developing a Model Crisis Response Plan" which updated prior guidance to USAOs on how to prepare effective and comprehensive critical incident response plans. In addition, in April 2003, EOUSA co-sponsored with the Centers for Disease Control training on responding to chemical or biological incidents, and the Department has provided training during the past year for prosecutors and investigators on the USA PATRIOT Act, and other changes in law relative to intelligence and law enforcement techniques and information sharing, and a broad array of substantive training provided by EOUSA to USAOs and Department attorneys through EOUSA's Office of Legal Education and JTN broadcasts. As noted above, as a result of the March 2003 CMC-specific video-conference and the May 2003 updated and specific guidance contained in the "Guide to Developing a Model Crisis Response Plan" provided to USAOs, numerous USAOs across the country are currently

revising their plans in accordance with that guidance. In addition, CTS and EOUSA are jointly planning a March 2004 training conference at the National Advocacy Center that will provide additional guidance on changes in legislation, policy and critical incidence response practice that have taken place since September 11, 2001.

Recommendation 6:

We concur in this recommendation and are taking steps to implement it. EOUSA, CTS, and the AGAC are forming a small working group to review, evaluate and provide feedback to each USAO on their crisis response plan. CTS has drafted proposed criteria for the evaluation of the plans consistent with the May 2003 "Guide to Developing a Model Crisis Response Plan." In addition, CTS and EOUSA have scheduled crisis response training at the National Advocacy Center in March of 2004, which will include a table-top exercise designed to test the crisis response plans of every USAO and provide feedback to them.

Recommendation 7:

With the exception of our comments to Recommendation 3, we concur with this recommendation and are taking steps to implement it by providing guidance on crisis response exercises in the March 2004 training conference at the National Advocacy Center. As noted above, CTS personnel are enhancing their expertise in the design of crisis response exercises so that they are better able to provide specific guidance to USAOs in this area.

Recommendation 8:

We agree that a critical incident response website available to USAOs would be helpful and are working to augment existing CTS and EOUSA websites to serve this purpose. CTS has developed a website that is currently being piloted to USAOs and is working with EOUSA to make this website available to all USAOs. This site includes resources on crisis response issues; best practices; updates on law, policies and procedures; and other relevant information. For example, this website includes the 48 action checklist, the "Guide to Developing a Model Crisis Response Plan", and the Attachment to the Guide. In addition, the CTS website links to the EOUSA website which also includes a number of crisis response documents, including the CMC Manual. We believe that it would be more cost effective and a better use of resources to augment the existing websites rather than developing an additional one.

Recommendation 9:

We concur with this recommendation. In connection with the redesignation of CMC's, EOUSA and CTS have been working closely to track incoming communications from USAOs and to ensure that their records are consistent. It is anticipated that a similar mechanism can be utilized to track submissions of updated crisis response plans.

Recommendation 10:

We concur with this recommendation to the extent that it requests that we ensure that EARS evaluations of USAOs include a requirement for USAOs to have a current, updated crisis response plan and to periodically tests these plans.

In order to further address the recommendations and other aspects of your review, we have attached an Action Plan for Crisis Management Response Planning.

Attachment

cc: David Downs
Liaison
Executive Office For United States Attorneys

Julie Wellman
Liaison
Criminal Division

Vicki Sloan
Director
Departmental Audit Liaison Office

APPENDIX F

OFFICE OF THE INSPECTOR GENERAL'S ANALYSIS OF THE CRIMINAL DIVISION'S AND THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE

The Office of the Inspector General (OIG) sent copies of the draft report to the Executive Office for United States Attorneys (EOUSA) and the Criminal Division (CRM) with a request for written comments. The Director of EOUSA and the Assistant Attorney General for the Criminal Division responded to us in a joint memorandum dated November 10, 2003. Although EOUSA and CRM expressed concerns about several of the report's conclusions, they concurred with nine of the recommendations and partially concurred with the tenth. Our analysis of their response follows.

Response from CRM and EOUSA

CRM and EOUSA agree that they could have focused more attention on certain aspects of the crisis response program. However, they believe that the report should more clearly reflect that the Department of Justice (Department) is better prepared today to respond to critical incidents than it has been in the past. CRM and EOUSA suggest that much of the OIG's report focuses on historical flaws in their process for developing and assessing critical incident response plans (Plans), and that readers of the report may misunderstand the scope and nature of their past and current response preparation efforts. The CRM and EOUSA response provides detailed comments regarding three points that they believe deserve greater recognition. We examine each of these points in turn.

Specific Issues

A. Critical Incident Response Plans

CRM and EOUSA state that the draft OIG report "does not place the existence and use of the Critical Response Plans in the appropriate context." They suggest that the quality of a United States Attorney's Office (USAO) Plan is only one part of "answering the broader question of whether USAOs are prepared to respond to critical incidents." CRM and EOUSA state that some of the recommended actions on the 48-item checklist "are so second nature to the experienced prosecutors drafting and/or implementing these plans that there would be no need to specifically list them." Consequently, they argue that examining whether a USAO has included items on the checklist in its Plan is not a proper standard for judging the USAO's preparedness to respond to a

crisis. In addition, CRM and EOUSA state that some of the actions on the checklist are “primarily under the domain of the FBI [Federal Bureau of Investigation] or another law enforcement entity” with the USAOs in a supporting role and, therefore, those actions would not need to be addressed in the USAOs’ Plans.

OIG Analysis. We agree that the Plans are only one part of the USAOs’ critical incident response preparations. Therefore, in this review we examined other Crisis Management Coordinator (CMC) Program activities such as the training provided to USAOs’ CMCs, the crisis response exercises conducted by USAOs, and the Counterterrorism Section’s (CTS’s) and EOUSA’s support and administration of the CMC Program. We found significant deficiencies not only in the Plans, but also in those other activities. Consequently, our conclusion that USAOs have not prepared adequately is based on a more comprehensive review of critical incident response deficiencies than acknowledged by CTS and EOUSA.

We do not agree with CRM and EOUSA’s contention that “some of the recommended actions in the 48-item checklist...are so second nature to experienced prosecutors” that they need not be included in the crisis response Plans. As demonstrated during numerous past critical incidents, even experienced personnel may forget obvious actions that are usually “second nature.” Further, our interviews with 26 CMCs, all of whom are highly experienced prosecutors, confirmed that the 48 items on the checklist should be addressed in the Plans and are appropriate actions to take in responding to a critical incident.⁵²

Moreover, while some of the 48 items on the checklist clearly are more important than others, our review found that most of the Plans omitted more than a few actions that might be considered “second-nature.” Sixty-four of the 76 Plans (84 percent) addressed less than half of the 48 items and many of the missing items represented significant actions in a crisis situation. For example, 54 Plans failed to address crime scene protocols and preservation, which were identified as problems in the Oklahoma City Bombing after-action report. Including all 48 items in the Plans ensures that they will be addressed during training, exercises, and when responding to a critical incident. While we agree that some of the actions may be “second nature” during routine operations, we believe that failing to incorporate all 48 actions in the USAOs’ Plans creates a needless risk that some actions will be omitted during a critical incident.

⁵² The CTS itself validated the checklist by reissuing it as current guidance in May 2003 as part of its new “Guide to Developing a Crisis Response Plan.”

Regarding CRM and EOUSA's contention that some of the actions on the checklist are "primarily under the domain of the FBI or another law enforcement entity," we acknowledge that many entities may be involved in responding to a critical incident. However, the U.S. Attorney is the chief law enforcement officer in each federal judicial district, and the 48 action items were included on the checklist because the USAOs have a significant interest in each activity, even if they are not the lead entity for each item. U.S. Attorneys should prepare and train for any aspect of the government's response that will affect their ability to conduct a successful investigation and prosecution.

Finally, as described in the Department's Performance Plan, one purpose of the USAOs' Plans is to provide a "cross-walk" with the Plans of the FBI and other law enforcement entities. In accord with that purpose, addressing all 48 actions in the USAOs' Plans is essential for ensuring that the Department's response to a critical incident is coordinated and effective, regardless of jurisdictional authorities.

B. CTS' and EOUSA's Efforts After September 11, 2001

CRM and EOUSA state, "The draft report does not clearly acknowledge the extensive and comprehensive joint efforts undertaken during the past two years to enhance the Department's overall ability to respond to critical incidents." Further, they state that "the draft report...does not adequately reflect the substantial changes that were made in CTS, EOUSA, and the USAOs in response to 9/11 to focus attention on critical response to terrorism incidents," such as the revised Strategic Plan and the Anti-Terrorism Advisory Council (ATAC).⁵³ Finally, CRM and EOUSA state that the report "faults CTS and EOUSA for failing to provide appropriate training and guidance as to changes in law and departmental and national policy (Draft report at iii, 18, 22)," and cite several examples of training that they state "specifically addressed crisis response in terrorism and provided updated legal" training to improve the ability of the USAOs to respond to a crisis.

OIG Analysis. As stated by CRM and EOUSA, after September 11, 2001, the Attorney General directed that the Department refocus its efforts on preventing terrorism. Consequently, CTS, EOUSA, and the USAOs all substantially refocused and undertook several major initiatives to prevent terrorist attacks. Our report acknowledges some of these initiatives, such as the training of 1,600 prosecutors and law enforcement officers, a 4-day anti-terrorism teleconference to 25,000 viewers, an anti-terrorism conference

⁵³ Attorney General Memorandum to all United States Attorneys, "Responsibilities of Anti-Terrorism Advisory Councils (ATACs)," September 24, 2003. The ATACs were formerly known as Anti-Terrorism Task Forces (ATTFs).

attended by U.S. Attorneys in January 2003, and 6 national security conferences attended by prosecutors and FBI supervisors (page 20). However, while CTS and EOUSA have taken significant steps to respond to the threat of terrorism by improving the Department's ability to prevent attacks, which we acknowledge, there is a significant difference between preventing attacks and preparing to handle a crisis if prevention efforts fail. Our review focused on the USAOs' preparations to respond in the event that terrorist attacks – or other critical incidents that do not involve terrorism – occur.

During our review, we examined the training cited by CRM and EOUSA and found that it was not complete or effective because it did not sufficiently address critical incident response (as opposed to preventing terrorist attacks), and few CMC Program staff attended the training. For example, we reviewed the two national ATTF training conferences and the six regional training conferences and found that the training focused on intelligence gathering and information sharing to prevent terrorist attacks, not on preparing to respond after an attack or other critical incident. Only the first ATTF conference included a session on crisis response and it was only a small part of the agenda.

Moreover, our review of the attendee lists from training events related to the ATTF initiative found that few CMCs attended the training. For example, the CTS provided us with the rosters from three training events: National Security Conferences, May-July 2003; Bioterrorism Conference, April 2003; and National Security Conference, September 2003. Based on our most recent list of CMCs, we found that 52 of 94 CMCs attended the May-July National Security Conference, 14 attended the April Bioterrorism Conference, and none attended the September National Security Conference.

Our conclusion that the training provided to CMCs was inadequate was confirmed in our interviews with CMCs, as most (24 of the 26) identified the lack of training as the major hurdle they faced in improving the readiness of their offices to respond to a critical incident. In particular, all ten of the CMCs we interviewed who also hold the ATTF Coordinator position for their USAOs told us that the ATTF training they attended was not a substitute for CMC-specific training.

CRM and EOUSA's statement that the report "faults CTS and EOUSA for failing to provide appropriate training and guidance as to changes in law and departmental and national policy (Draft report at iii, 18, 22)" is incorrect. We reported a lack of training, but, as is made clear on page 19, it was the USAOs' CMCs who reported to us during interviews that they needed additional training on changes in law and departmental policy. Specifically, the report states: "the CMCs stated that the training should be revised to include changes that have occurred since the last CMC Training Conference in 1999.

The changes include the post September 11, 2001, reorganization of the Department to focus on counterterrorism; the passage of the USA PATRIOT Act and other terrorism-related legislation” and other changes. We included the CMCs’ statements so that CTS and EOUSA could consider addressing the CMCs’ self-identified needs when developing future training.

Therefore, while we acknowledged CTS and EOUSA’s significant efforts since September 11, 2001, those efforts have been directed predominantly at improving the ability of the Department to prevent terrorist attacks. Although preventing attacks is of primary importance, the Attorney General’s Anti-Terrorism Plan also directs the Department to be prepared to respond when terrorist attacks or other critical incidents occur. Despite CTS and EOUSA’s efforts, our review of the USAOs’ preparations to respond after attacks and other critical incidents found that the Plans were inadequate; that few USAOs conducted exercises to test their Plans; and that CTS and EOUSA did not fulfill their administrative and support responsibilities to provide guidance and conduct crisis response training. These deficiencies existed from the inception of the CMC Program in 1996 and still have not been addressed adequately. Consequently, we maintain that the USAOs have not effectively implemented the CMC Program. However, we acknowledged that CTS and EOUSA have begun to address these deficiencies, as they stated in their Action Plan included with their response to the report.

C. CTS and EOUSA’s Efforts Since the Late Fall of 2002

CRM and EOUSA stated that although they could have “done more to focus attention on certain aspects of the crisis response program, especially between September 11, 2001, and the fall of 2002, [they] have been working together since then to provide the necessary focus and training to improve the crisis response program.” They cite various collaborative training efforts and an October 17, 2003, Departmental memorandum to all United States Attorneys to “re-appoint a CMC that will operate under the auspices of the ATAC” as evidence “that crisis response efforts are currently being enhanced to respond to areas for improvement noted in the OIG report.”

OIG Analysis. We considered the training and other efforts that CRM and EOUSA cited as evidence that improvements are underway. We reviewed each of the efforts they described, but found that many were not as effective as they could have been for improving the CMC Program (as described in our response in section B), or that the efforts had not yet taken place. For example:

- The Anti-Terrorism Conference for U.S. Attorneys in January 2003 (pages 20-21). This conference was only for U.S. Attorneys and no CMCs attended. Consequently, although the conference included a

module on crisis response, the training was not presented to the staff responsible for planning the response (i.e., CMCs). In addition, the CMCs' responses to our February 2003 survey strongly indicated that training was lacking.

- The March 2003 CMC-specific videoconference (pages 19, 23, and 24). We reviewed a videotape of the two-hour teleconference. The training included no new information regarding the CMC Program itself. Other than citing the need for USAOs to conduct exercises, there was no training content directed at conducting crisis response exercises, one of the areas of need most consistently cited in our interviews with CMCs. Coverage of the USA PATRIOT Act and the Bio-terrorism Act of 2002 consisted of presenting a brief synopsis of the Acts, rather than an in-depth discussion of their impact on the CMC Program.
- The development and dissemination of the "Guide to Developing a Model Crisis Response Plan" (page 23). We acknowledge that the Guide was distributed to USAOs in May 2003. However, during our review no USAO Plans were revised based on the Guide and submitted to CRM and EOUSA.
- The establishment of a working group to issue guidelines for USAOs security plans (page 15). We acknowledge CRM and EOUSA's plans to create a working group to review integration of the various plans required from USAOs. However, their response did not provide us with details on the role, responsibilities, and assigned activities of this working group.
- A March 2003 request to place the CMC Program under the auspices of the ATAC (page v). This proposal was not approved until October 17, 2003, well after the draft report was provided to CRM and EOUSA, and the impact of this consolidation is not yet clear. Although placed under the ATACs, the CMCs "will remain responsible for the creation, implementation, maintenance and exercise of their district's crisis response plan..."⁵⁴ However, the ATACs are only responsible for responding in the event of terrorist attacks, not other critical incidents. It is not clear whether the ATACs' responsibilities will be expanded to include non-terrorist critical incidents, or whether the CMCs are still responsible for responding to non-terrorist critical incidents separately. Until such issues are resolved, we cannot

⁵⁴ Memorandum from Guy Lewis, Director, EOUSA, to All United States Attorneys, "Merger and Realignment of Crisis Management Coordinators Program Under Anti-Terrorism Advisory Council," October 17, 2003.

determine how the realignment of the CMCs may affect the USAOs' ability to respond to critical incidents, especially those that are not terrorist-related.

- Planning for crisis response training at the National Advocacy Center in March 2004 (pages 6 and 19). We note in the report that CTS and EOUSA are planning CMC training in March 2004.

Our report also acknowledged that, since we began our review in December 2002, CTS and EOUSA increased their attention to the CMC Program. Those efforts ultimately could significantly improve the USAOs' crisis response preparations. However, the deficiencies we found in our review of the USAOs' plans and exercises, the training provided to CMCs, and the administration and support provided by CTS and EOUSA show that significant improvements are still needed.

D. The Report's Final Conclusion

CRM and EOUSA state that the report's final conclusion concerning the Department's overall preparedness "exceeds the scope of an inquiry that was limited to a review of critical incident response plans and does not properly credit all the steps taken by EOUSA, CTS, and the USAOs." They assert that this is particularly significant because the report does not contain a time frame for the inspection, but "includes the finding that the need to prepare for critical incidents has not been met." CRM and EOUSA conclude by stating that they will continue to seek to improve preparedness, but believe "that a complete review of past efforts, current work, and future plans demonstrates that the need to prepare is being properly addressed."

OIG Analysis. The CRM and EOUSA response understates the scope of our review. As described on page i, "We conducted this review to determine whether the USAOs have acted to improve their ability to respond quickly and appropriately to critical incidents by developing comprehensive critical incident response plans, training staff to carry out the Plans, and exercising the Plans." We also considered all of the past, current, and planned efforts cited by CTS and EOUSA as contributing to the USAOs' preparedness to respond to critical incidents. In addition, our survey and interviews with CMCs addressed many aspects of the USAOs' crisis response preparations. We found significant shortcomings in each of these areas, which led us to conclude that "[t]he failure of the USAOs, CTS, and EOUSA to fully implement the CMC Program leaves the Department less prepared to respond effectively when critical incidents occur" (page 32) (emphasis added). In our report, we did not conclude that the Department was "unprepared" to respond to a critical incident. Rather, we concluded that the Department was "less prepared" than it could have been – and should be – to respond to critical incidents.

That conclusion is warranted because we found that significant deficiencies in the majority of USAOs' Plans have remained uncorrected for years, that few USAOs conducted regular crisis response exercises since 1996 (most conducted no exercises), and that the training provided to CMCs was inadequate. Further, notwithstanding current efforts, CTS and EOUSA's support and administration of the CMC Program have not been effective to correct the deficiencies.⁵⁵ The inadequate and incomplete preparations we documented contradict CRM and EOUSA's opinion "that a complete review of past efforts, current work, and future plans demonstrates that the need to prepare is being properly addressed." The corrective actions that CRM and EOUSA agreed to implement, and have begun to implement in response to our review and its ten recommendations (described below), once completed, will help ensure that USAOs are better prepared to respond to critical incidents.

Regarding CRM and EOUSA's statement that the draft report contained "no statement concerning the timeframe" of the review, our final report includes the beginning and end dates of our review—the review began in December 2002 and ended in October 2003.

RECOMMENDATIONS

Recommendation 1: Resolved – Open

Summary of CRM and EOUSA's Response: CRM and EOUSA agree that performance measures should reflect that USAOs have "meaningful plans and periodically exercise and revise those plans." To that end, EOUSA and CTS will develop performance measures to assess, exercise, and revise crisis response plans by June 30, 2004. However, CRM and EOUSA state, "The establishment of performance measures to evaluate overall readiness is a more complex matter and exceeds the scope of this review."

OIG Analysis. The actions planned by CTS and EOUSA – to jointly develop performance measures to assess critical incident response plans, as well as the USAOs' exercise and revision of those plans – are responsive to our recommendation. Please provide us with a copy of the performance measures by July 9, 2004, as well as CTS and EOUSA's plan to implement and track the performance measures.

The CRM and EOUSA's objection that measuring the overall readiness of USAOs exceeds the scope of the review misconstrues our recommendation.

⁵⁵ In May 2003, CTS issued its new "Guide to Developing a Crisis Response Plan" with instructions for USAOs to review and revise their Plans based on the Guide. However, during our review no USAO Plans were revised based on the Guide and submitted to CRM and EOUSA.

Our recommendation was to establish performance measures “to assess the readiness of USAOs to respond to critical incidents.” By establishing performance measures to assess the significant products and activities associated with critical incident response preparedness, which is within the scope of this review, CRM and EOUSA will meet the intent of this recommendation.

Recommendation 2: Resolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA state that USAOs are revising their Plans in accordance with the “Guide to Developing a Model Crisis Response Plan” issued in May 2003. CRM and EOUSA further state that they are forming a small working group with participation from the Attorney General’s Advisory Committee to review the revised Plans and provide “individualized feedback to all USAOs.” Lastly, they state that CTS and EOUSA have scheduled crisis response training at the National Advocacy Center in March 2004, which will include a tabletop exercise to test each USAO’s Plan.

OIG Analysis. The actions planned by CTS and EOUSA are responsive to our recommendation. By January 15, 2004, please provide us with the charter or other instructions for the working group and the criteria developed for evaluating the USAOs’ Plans. By July 9, 2004, please provide us with a list of USAOs that have submitted revised Plans and received feedback on the revised Plans.

Recommendation 3: Unresolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA agree that participation in periodic exercises to test critical incident response plans is advisable, but disagree that each USAO should be required to conduct its own exercises. CRM and EOUSA state that this requirement may be a burden for some offices, particularly smaller offices, and could divert USAOs from other equally important duties. With respect to participating in periodic exercises of the Plans, CRM states that CTS is enhancing its expertise in designing crisis response exercises in order to provide specific guidance to USAOs. Finally, CRM and EOUSA state that the agenda for the March 2004 training at the National Advocacy Center will include crisis response exercises.

OIG Analysis. The CRM and EOUSA response does not address our recommendation that each USAO follow the standard practice of testing its plan for responding in the event of a critical incident.⁵⁶ While conducting full

⁵⁶ Conducting crisis response exercises is standard practice for emergency response programs throughout government. For example, as described on page 16 of this report, the FBI requires its field offices to conduct annual crisis response exercises, and the Federal

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field exercises may be burdensome for some USAOs, the intent of our recommendation may be met with exercises that are limited in scope (e.g., tabletop exercises) or frequency (e.g., triennial exercises in lieu of annual exercises), or that are conducted in conjunction with another agency (e.g., another USAO or the FBI). We note that CTS and EOUSA intend to include exercises in the agenda for the planned March 2004 training. However, while small segments on conducting exercises were included in the 1997 and 1999 CMC training, over 60 percent (49 of 81) of the USAOs responding to our survey still reported that they had conducted no exercises since 1996. Therefore, by January 15, 2004, please provide us with an appropriate requirement and implementing guidance for USAOs to periodically conduct exercises or to participate in exercises led by other organizations. As CRM and EOUSA agreed in response to Recommendation 1 to develop performance measures to “assess crisis response plans and [the] *exercise*...of those plans,” the exercise requirements should be consistent with the performance measures.

Recommendation 4: Resolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA agree with the recommendation that all United States Attorneys establish workload-reporting procedures to capture the time dedicated to critical incident response planning duties, and state that EOUSA is “exploring appropriate means to implement this recommendation.”

OIG Analysis. The planned actions are responsive to our recommendation. Please provide us with the new workload-reporting procedure or a status report on its development by March 31, 2004.

Recommendation 5: Resolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA agree that CTS should provide updated training and guidance to USAOs on how to prepare effective and comprehensive Plans. In its response, CRM and EOUSA cite ongoing efforts to implement this recommendation, including the May 2003 Guide, EOUSA and Centers for Disease Control co-sponsored training, Department training for prosecutors and investigators on the USA PATRIOT Act, and the “broad array of substantive training” provided by EOUSA to USAOs and Department attorneys. CRM and EOUSA also state that the upcoming March 2004 training at the National Advocacy Center will include “additional guidance on changes in legislation, policy and critical incidence response practice that have taken place since September 11, 2001.”

Emergency Management Agency’s Federal Preparedness Circulars require all federal agencies to exercise annually their plans for maintaining agency operations in the event of catastrophes.

OIG Analysis. The ongoing and planned efforts to improve training and guidance on preparing to respond to critical incidents are responsive to our recommendation. Please provide us with the final agenda for the March 2004 training conference by April 9, 2004.

Recommendation 6: Resolved – Open

Summary of CRM and EOUSA's Response. CRM and EOUSA agree with the recommendation that CRM review all USAOs' Plans, including revisions, to ensure that the Plans cover all critical areas; provide individualized feedback to USAOs; and periodically report to the Deputy Attorney General on the status of the USAOs' Plans. As stated in the response to Recommendation 2, CRM and EOUSA plan to form a small working group with the Attorney General's Advisory Committee to review, evaluate, and provide feedback to each USAO on its Plan. CTS states that it has already drafted proposed criteria for evaluating the Plans using the May 2003 Guide and cites the upcoming March 2004 training at the National Advocacy Center, which will include a tabletop exercise "designed to test the crisis response plans of every USAO and provide feedback to them."

OIG Analysis. The actions planned by CRM and EOUSA are responsive to our recommendation. The supplemental information we requested for Recommendation 2 will suffice to provide the status of actions taken to implement this recommendation.

Recommendation 7: Resolved – Open

Summary of CRM and EOUSA's Response. CRM and EOUSA agree with the recommendation to provide USAOs with training and guidance on how to develop and conduct appropriate critical incident response exercises, and plan to provide the training and guidance at the March 2004 national conference. However, CRM and EOUSA reiterate the objection they raised in response to Recommendation 3, i.e., that they do not agree that each office should be required to conduct its own exercises.

OIG Analysis. The actions planned by CRM and EOUSA are responsive to our recommendation. Please provide us with copies of the training materials and guidance relevant to exercising critical incident response plans by April 9, 2004.

Regarding CRM and EOUSA's reiteration of their objection to requiring each office to conduct its own exercises, in our analysis of the response to Recommendation 3 we request that they establish an appropriate requirement for USAOs to conduct exercises (field, tabletop, or other) or to participate in

exercises led by other organizations. CRM and EOUSA agreed in response to Recommendation 1 to develop performance measures to “assess crisis response plans and [the] exercise...of those plans.” (emphasis added) At the March 2004 national training conference, the USAOs should be provided guidance on how to develop and conduct exercises and informed how their performance at conducting exercises will be tracked.

Recommendation 8: Resolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA agree that they should complete the development of a website containing information on critical incident response. They indicate that the website will contain resources on crisis response issues; best practices; updates on law, policies, and procedures; and other relevant information, as well as links to other existing websites with information on crisis response. The CTS is piloting the website with several USAOs and is working with EOUSA to make it available to all USAOs. The response further indicates that CRM and EOUSA believe that it would be more cost effective to augment an existing website (i.e., the website being piloted by CTS) than to develop an additional one.

OIG Analysis. The actions planned by CRM and EOUSA to develop the described website are responsive to our recommendation. By January 15, 2004, please provide us with access to the website and a copy of the website development and implementation plans.

Regarding CRM and EOUSA’s statement that they intend to augment the current pilot rather than develop a new website, that course of action is consistent with the intent of our recommendation that they “complete the development” of the website now being piloted.

Recommendation 9: Resolved – Open

Summary of CRM and EOUSA’s Response. CRM and EOUSA agree with the recommendation that EOUSA establish a system for accurately tracking and reporting the status of USAOs’ submissions of and updates to their Plans. CRM and EOUSA state that they have been working closely together to track incoming communications from USAOs and ensure that they both maintain consistent records. CRM and EOUSA anticipate that “a similar mechanism can be utilized to track submissions of updated crisis response plans.” In an *Action Plan for Crisis Management Response Planning* provided with their response, CRM and EOUSA indicate that the target completion date for the shared tracking system is November 1, 2004.

OIG Analysis. The actions planned by CRM and EOUSA to develop a system that will track the Plan submissions and other incoming

communications from USAOs and ensure that CTS and EOUSA maintain consistent records are responsive to our recommendation. By March 31, 2004, please provide us with a status report on the development of the tracking system that CRM and EOUSA will use to monitor USAO Plan submissions and other communications.

Recommendation 10: Resolved – Open

Summary of CRM and EOUSA's Response. CRM and EOUSA agree with the recommendation "to the extent that it requests that we ensure that EARS evaluations of USAOs include a requirement for USAOs to have a current, updated crisis response plan and to periodically test these plans."

OIG Analysis. The actions planned by CRM and EOUSA – to revise the Evaluation and Review Staff (EARS) evaluations to include steps to ensure that USAOs have current, updated crisis response plans and that the USAOs are periodically testing those plans – are responsive to our recommendation. By March 31, 2004, please provide us with the EARS' review guide that includes procedures for evaluating the USAOs' compliance with the requirement to have current, updated Plans and conduct periodic exercises of the Plans.